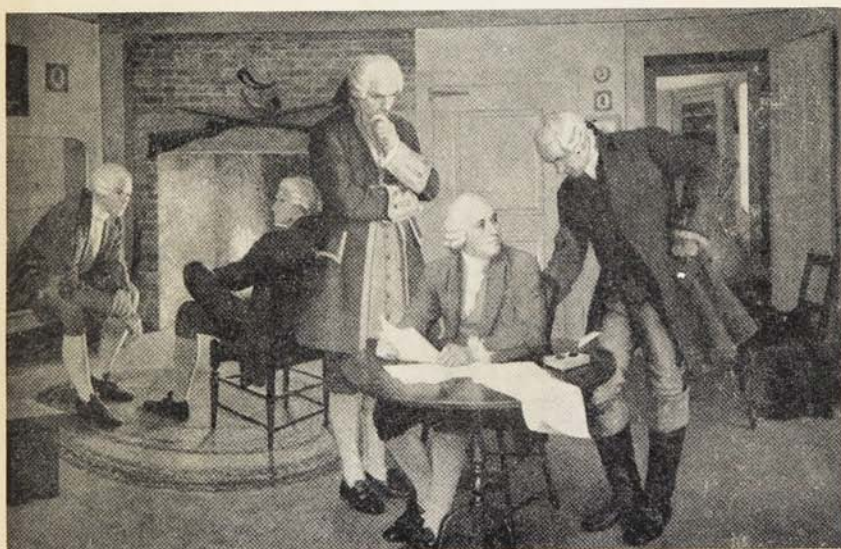


96
1741:5954 re
1958-59
A copy

The Commonwealth of Massachusetts

THIRD ANNUAL REPORT
to the
JUSTICES OF THE
SUPREME JUDICIAL COURT
by the
EXECUTIVE SECRETARY
as of
June 30, 1959



JOHN ADAMS, SAMUEL ADAMS AND JAMES BOWDOIN
DRAFTING THE MASSACHUSETTS CONSTITUTION OF 1780

The picture on the front cover is from the mural by Albert Herter in the State House.

ARTICLE XI OF THE DECLARATION OF RIGHTS
IN THE CONSTITUTION OF MASSACHUSETTS

“Every subject of the Commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws.”

THIRD ANNUAL REPORT

to the

JUSTICES OF THE

MASS: SUPREME JUDICIAL COURT:*by the*

EXECUTIVE SECRETARY.

as of

June 30, 1959

TABLE OF CONTENTS

	PAGE	PARAGRAPH
INTRODUCTION	3	1
COURT CONGESTION	4	7
COST OF OPERATING THE COURTS	8	16
PHYSICAL FACILITIES	9	20
JUDICIAL PENSIONS	12	35
USE OF RETIRED JUDGES	14	42
PRACTICE AND PROCEDURE	16	45
CRIMINAL PROCEDURE AND RELATED MATTERS	17	48
COMMENTS ON VARIOUS COURTS		
(a) Supreme Judicial Court	19	53
(b) Superior Court	20	57
(c) Probate Courts	22	63
(d) District Courts	23	67
(e) Municipal Court of the City of Boston	28	81
(f) Land Court	29	83
(g) Boston Juvenile Court	30	86
RECORDING OF COURT PROCEEDINGS	30	87
COMPLAINTS	31	90

(Continued on Next Page)

STATE LIBRARY OF MASSACHUSETTS

TABLE OF CONTENTS — Continued

APR 18 1960

PAGE

APPENDIX I

An act to extend the period of time for use of district court judges to sit in the superior court on trials of motor tort actions and to make permanent the use of district court judges to preside in the superior court on trials of misdemeanors	32
---	----

APPENDIX II

Computation of the costs of operating the courts	33
--	----

APPENDIX III

Bills to permit recall of retired judges for temporary active service	52
---	----

APPENDIX IV

Bill to clarify certain provisions of the law relating to transfer of actions for trial by the superior court to the district courts	56
--	----

APPENDIX V

An act relative to proof of issues in petitions under the Uniform Reciprocal Enforcement of Support Act, General Laws, Chapter 273-A	58
--	----

APPENDIX VI

An act to increase maximum jurisdiction in small claims procedure in the district courts	59
--	----

APPENDIX VII

Statistics	60
----------------------	----

M41:5954 re
1958-59
A copy

INTRODUCTION

To the Supreme Judicial Court:

1. The undersigned herewith submits his annual report as required by General Laws, chapter 211, section 3E. It covers the period from July 1, 1958, to June 30, 1959. Except for the statistics of the work of the various courts it was completed in the middle of July. It appeared first in a mimeographed edition without the court statistics. Since these have become available it has been issued in printed form.

2. The work of the office has been substantially similar to that in the preceding years. During the year we have sponsored an all-day conference in Worcester of probate judges, registers and assistant registers. It was so well attended and so many interesting matters were brought up for discussion that we plan to repeat it. We also sponsored a repetition of last year's conference of district attorneys, the attorney general, judges and the probation commissioner. The subject of the conference this year was the application of civil rights in criminal proceedings.

3. The same general format of publishing statistics has been kept. In reporting on the cost of the operation of the court system we have included certain more detailed itemizations. The same form of reporting probate court statistics is used this year, but beginning with next year it is hoped that a more comprehensive formula for reporting these statistics will be available.

4. The office has continued to receive complete cooperation from all the courts and their attaches. This same observation also applies to the other public offices, state, county and municipal.

5. All statements, opinions and recommendations, whether contained in this report or in any other communications, are made solely on the responsibility of the undersigned unless stated specifically to be on the initiative in whole or in part of some other person.

6. As will appear more in detail in the later pages the past court season has been one of steady if not spectacular progress in the efficient operation of the whole undertaking of administering justice. This is not a merely perfunctory remark of formal, polite congratulation. On the other hand it is not meant in the least to imply that we should now or at any time adopt an attitude of complacent satisfaction—retrogression is just as easy as progress. Administering justice must by its very nature be a difficult task in its day-to-day application.

COURT CONGESTION

7. This heading is used mainly because it has been used in earlier reports. I am pleased to report that it is now largely a misnomer. In Massachusetts it was never applicable except to the jury lists in the superior court and from time to time to the jury-waived lists in some of the counties. It denoted a situation in which cases were not reached for trial for years after their entry, at one time as long as four years in one of the counties and approaching it in some of the others. The maxim that justice delayed is justice denied was translated into reality in all too many instances. This thoroughly bad situation no longer exists. While we have not reached perfection the acute condition of a few years back has now been largely corrected. It must be emphasized that there can be no slackening of efforts to see to it that the lists do not again become clogged and cause unreasonable delays in trials. There is no indication that the total volume of litigation will decrease—indeed, it is more likely to increase.

8. As the court season went along the effect of the additional superior court judges authorized by Acts of 1958, chapter 370, was felt. In many of the counties it became possible to provide additional and longer sessions, both with and without jury. The jury-waived lists in Boston and Cambridge have improved steadily. During much of the time it was possible to provide three contested sessions without jury in Boston, and throughout the season two have been maintained in Cambridge. The ability to keep in operation an adequate number of jury-waived sessions not only benefits the parties to cases on their lists, but also reduces the need of references to masters or auditors, with consequent savings to the state, county and Boston treasuries. There are other examples of increased service. Between the jury and the jury-waived sessions Norfolk county now has superior court sittings continuously throughout the season—the jury session alone runs for seven and a half months. In Plymouth county, between the civil and criminal sessions and between the two shire towns, Brockton and Plymouth, there is now a superior court judge sitting in the county practically all the season. Sessions without jury can now be provided in the summer months at Cambridge.

9. The following schedule indicates the approximate time between entry and trial of civil jury cases reached in normal course, that is, not advanced or postponed for good cause:

Counties in Which Sittings Are Continuous

BRISTOL

Taunton	10 months
Fall River	12 "
New Bedford	14 "

ESSEX

Salem	10 months
Lawrence	11 "
Newburyport	7 "

HAMPDEN

10 months

MIDDLESEX*

Cambridge

Motor Vehicle Torts	11 months
Other Cases	15 "

Lowell

Motor Vehicle Torts	10 "
Other Cases	13 "

NORFOLK

12 months

SUFFOLK

10 months

WORCESTER

Fitchburg	12 months
Worcester	11 "

County With Nearly Continuous Sittings

PLYMOUTH

Brockton	10 months
Plymouth	10 "

Counties in Which Sittings Are Not Continuous
(Approximate Age of Most Recent Cases Reached
in Normal Course When Sittings Are Held)

BARNSTABLE	11 months
BERKSHIRE	9 "
DUKES	7 "
FRANKLIN	5 "
HAMPSHIRE	7 "
NANTUCKET	7 "

*This is now the only county in which there is any appreciable difference in the delay in the two classes of cases.

In comparing this schedule with a similar one reported last year it will be noted that in Middlesex county, although it is affected by lack of courtrooms, see paragraph 31, the jury list has been brought to a point where motor torts are being tried within a year and progress has also been made in reducing the time-lag in other types of cases. It is also to be borne in mind that the schedule reported above refers to ordinary cases, not entitled to be advanced. If regard were to be had to those cases advanced for speedy trial for one reason or another the average time-lag would be further reduced. This is not, however, a sound method of appraising the delay on a list. These advanced cases are the exceptional minority, and by the amount of time they take for trial they throw back the other cases.

10. The superior court has continued to use district court judges to preside over trials of motor torts, but on a much reduced scale. Between these sessions and the misdemeanor sessions an average of about eight district court judges have been used, as against about eighteen in the previous year. None of the judges used this year were presiding judges over full-time district courts. The hope expressed in paragraph 10 of last year's report that the strain on the district court system would be reduced has thus been realized. From all comments heard from the trial lawyers, who are in the best position to know, the services of these district court judges continue to be highly satisfactory. The present act, General Laws, chapter 212, section 14B, enabling district court judges to sit in the superior court on misdemeanor and motor tort trials, expires on September 1, 1961. As to misdemeanors, I recommend that the authorization be made permanent, and as to motor torts that it be extended for a period of five years, to September 1, 1966. See Appendix I for draft of a proposed bill to carry out these purposes. The use of auditors on any extensive scale to hear motor torts or other types of cases has, except in Suffolk and Middlesex, gone back to practically the normal rate. There will always be cases, including some motor torts, in which a reference to an auditor to report the facts is desirable. In Boston the use of auditors' references is slowly declining and in a matter of months it is expected to be reduced to normal. References continue to be made in Middlesex largely because of the lack of courtrooms to accommodate the volume of business in this county, particularly at Cambridge.

11. The most important procedural change affecting the superior court this year is the "remanding" statute, as it is commonly called, Acts of 1958, chapter 369, sections 3 and 4, inserting new section 102C in chapter 231. This law permits the transfer for trial by the superior court to the district courts and the municipal court of

the city of Boston of cases where probable recovery does not exceed \$1,000. The determination of this is simple where the ad damnum is less than that figure or where the declaration or answers to interrogatories show a liquidated claim for less. Where the damages are not liquidated, as in personal injury cases, more difficulty is presented. The superior court has by rule provided for a statement in some detail by counsel outlining the nature of the plaintiff's claim, to help in determining the probable recovery if the plaintiff should prevail. It has been the policy of the judges not to transfer cases unless it is clear that a finding of over \$1,000 would not be reasonable. Hence by no means all cases which later turn out to be worth less than \$1,000 are transferred; juries may not think as highly of the damages as the plaintiff or his counsel. It will also happen that a case when tried in the lower court will be found to be worth more than \$1,000; in view of the caution of the judges in transferring border line cases such instances will be rare, and thus far out of many hundred cases tried after transfer only four findings of over \$1,000 have been reported. To the present time no district court has been overloaded. There are some courts in which the clerks feel that they have received about as many as their courts can take care of conveniently, but the majority of the judges and clerks believe that they can handle still more.

12. Now that the statistics have been reported, it appears that of the cases transferred for trial better than half will be settled in the district courts, a third or more will be tried and the others will be ended by technical dispositions such as non-suits, defaults, discontinuances. It can be assumed that of these latter cases many have in fact been settled, but that the parties have not bothered to file agreements for judgment. Most of the cases will be available for prompt trial, but inevitably there will be some in which military affidavits are filed, deaths of parties occur, as well as other reasons for indefinite delay in trial. Some 30% of the losers in the trials will claim a retransfer; it is as yet impossible to estimate how many of these cases ever will go to trial in the superior court. See Appendix VII for the detailed statistics of the municipal court of the city of Boston and the district courts.

13. The superior court has ordered transfer of 5,669 cases to the lower courts under the authority of the statute. This number is not to be taken as typical, as it includes those already on the superior court dockets as of September 1, 1958, accounting for nearly 2,000 of the total. Hereafter transfers will come only from cases being currently entered. It is too early now to calculate whether or not the existence of the remanding law will influence

plaintiffs to bring smaller cases in the district courts and the defendants to leave them there.

14. I estimate that as a result of the handling of these "remanded" cases in the district courts and the municipal court of the city of Boston and the final disposition of from eighty-five to ninety per cent of them in these courts, we get the equivalent of eight to ten tribunals in the superior court. Before the operation of the new law it was necessary to have in the neighborhood of seventy to seventy-five tribunals, between superior court judges, district court judges, auditors and masters, working in or for the court to keep up with its trial load, civil and criminal. The use of the district courts for the trial of a substantial number of the smaller cases in their own courts thus constitutes a significant amount of relief to the hard-pressed superior court at no additional expense to the public.

15. The preceding paragraphs discuss the handling of these cases from the point of view of the superior court. The effects of the new law and the dealing with the remanded or transferred cases in the district courts are also discussed more in detail, in paragraphs 67 to 74, and paragraph 81. See also several technical and procedural recommendations to clarify some of the wording of the statute, in paragraphs 70 to 74.

COST OF OPERATING THE COURTS

16. We have again computed the cost of operating the court system. The same formulas as in preceding years have been used, but with more detailed itemizations of some classes of the expense dealing with criminal and civil costs in the superior court paid by the various counties. The grand total is \$15,747,351.32, an increase of \$1,118,938.19 over the previous reporting period.

17. It is difficult to forecast the future trend of these expenses. Inflationary tendencies are still in evidence. Pressure to improve or replace obsolete and inadequate courthouses will continue. As such projects are undertaken substantial expense must be accepted as inevitable, whether they are paid from current tax levies or from public bond issues. Depreciation and obsolescence are inexorable processes. On the other side of the picture the combined effects of the remanding bill, the decreasing use of district court judges and auditors in the superior court will as time goes on result in substantial reductions in the expenses for these items.

18. A bill to have the state pay all the court expenses was filed as House 1142. In view of the controversy which has gone on this

year about the state budget, whether it should or should not be cut and if so, by how much, whether the state is or is not in a desperate financial plight, whether new taxes or increased taxes are needed, and if so, what kind of taxes should be levied for the first time or what present taxes should be increased, it could not be expected that the commonwealth would assume an additional load of some \$13,000,000. For the present local property taxpayers will have to continue to carry the major portion of the expense of running the courts.

19. The detailed schedules showing the court costs will be found in Appendix II, with further comments on some of the figures.

PHYSICAL FACILITIES OF THE COURTS

20. It is pleasing to be able to state that in the very important matter of physical facilities for the courts there has been substantial progress in this past year. True, it is sporadic, and we totally lack any planned program of improvement and modernization. It is clear that there is a steadily increasing awareness of the fact that unsuitable courtrooms are not only a reproach to the community but tend to reduce the efficiency of the courts in performing their function of administering justice. In the long run inferior court quarters are more expensive to maintain than good ones. Nor is there any indication that the cost of construction and remodelling will go down; on the contrary it appears to be rising. The longer a needed improvement is put off the more it is going to cost when the day comes when it must be done. In the following paragraphs we mention and comment on a number of instances where the physical conditions have been bettered.

21. In Westfield there is a completely new district court establishment. It occupies the southwesterly part of the first floor in the new city hall. This building was formerly the state normal school and was turned over to the city by the department of education. The court quarters consist of a main courtroom, a juvenile room, well-furnished and ample offices for the judge, clerk and probation officer, good conference rooms and storage space. They are all attractively furnished and well lighted; there is ample parking area on the lot itself. As far ahead as can be seen it is a fully adequate accommodation for the court.

22. The Norfolk county commissioners have bought a lot of land in Stoughton for a new district courthouse. The lot is big enough to provide for adequate parking. We can therefore now count on an early end of the present inferior accommodations in this district.

23. The city of Woburn has redecorated and repaired the rooms in city hall occupied by the district court. The unsightly appearance has been corrected but this court is still poorly laid out and badly cramped for space. A new courthouse is needed there.

24. The Middlesex county commissioners have an appropriation for plans for a new district court in Somerville. As yet the location has not been picked.

25. In Concord there is a hopeful development. The town is proposing to build a new town office building on land already owned by it just outside the center. A portion of the area has been reserved for a courthouse. It is not too much to expect that before long satisfactory arrangements can be made for such a building.

26. In Taunton work is now in progress to remodel the present district court building. The appropriation for this work was increased to \$240,000 by Acts of 1959, chapter 350. When the work is completed the building will be much more presentable and efficient.

27. In Attleboro the library on the second floor has been converted into an unusually fine juvenile court. The library itself has been moved to the room formerly used by the draft board, which in turn has taken one of the smaller offices on the second floor. Apropos of this court, it now needs storage space; in fact, the need is nearing the acute stage. At the same time it would be well to provide an increase in the working area of the clerk's office. There is ample room on the lot and an addition to take care of these matters should present no difficulty. I recommend that such an improvement be undertaken.

28. In Milford the rooms have been redecorated, acoustical tile ceilings and new lighting fixtures of modern type have been installed. New furniture has been bought for the main courtroom, which therefore can no longer be described as quaint.

29. In Athol negotiations are now in progress looking toward improvements in the rented quarters; the size of the courtroom will be reduced and the present crude offices will be modernized. The quarters will look like a court and not like an abandoned theatre—which in fact is what they are.

30. In Pittsfield the county commissioners of Berkshire are seeking an appropriation to put in an elevator in the superior-probate building and to build a small addition, enough to relieve to some extent the poor accommodations of the probate court and registry.

31. In Holyoke the offices have been completely redecorated. They are now bright and attractive in contrast to the former run-down condition. A new municipal parking area in the next block has greatly eased the parking problem; it is not completely solved but is much better than prior to the opening of this parking lot. Storage continues to be an acute problem.

32. As usual, the facilities at East Cambridge call for special comment. Work is now going on to put back into usable condition the two courtrooms in the old third district court building on Third Street. We hope that they will be fit to use at least for sessions without jury when the next court season opens. Otherwise the situation at Cambridge remains the same, that is, most unsatisfactory. Even with these two courtrooms in use the number of available rooms will be insufficient. As the population of the county increases it is reasonable to expect a gradual increase in the case-load. The inadequacy of the superior court facilities will go from bad to worse. The use of longer sittings in Lowell, where there are three good rooms, has been helpful; this is, however, at best only a palliative and not a solution of the problem. The courts are not alone in suffering inconvenience at East Cambridge. The county offices have long been cramped for space and it is now reported that the registry of deeds is feeling the need of additional working area. Available and suitable conference rooms simply do not exist; the corridors and the clerk's office are always crowded with parties, witnesses and lawyers, and the best place to confer is the front steps. What to do about this bad situation is still only in the stage of general discussion. One solution suggested is to build a multistory addition to the present courthouse. There is room on the lot to do this. In connection with this it is also suggested to tear down all or part of the old jail across the street, to close off Otis Street, and possibly to acquire more land in the vicinity for parking. Another suggested solution, advocated by the present county commissioners, is more radical and comprehensive. This is to move all the county activities to some new location more in the geographical center of the county. A suggested location is on Route 128 in Lexington, or near it. The city of Cambridge owns a considerable acreage in this neighborhood. This solution would also involve the removal of the Lowell superior court and registry of deeds to the new shire town. Either idea, if carried out, would involve substantial expense, running well into the millions. Meanwhile the courts will have to get along as best they can at East Cambridge, which is very badly.

33. A bill to provide for a new courthouse in Roxbury, Senate 277, is now pending in the legislature. At present there is a differ-

ence between the house of representatives and the senate on the question whether the construction shall be mandatory or permissive. It is much to be hoped that the differences will be reconciled and that in the not too distant future we shall have this needed improvement.

34. There are other places in which the improvement of court facilities remains only a matter of more or less interested discussion. Optimism and patience are required when considering our court accommodations. An encouraging sign is the increased activity of local bar associations in studying and recommending changes for the better.

JUDICIAL PENSIONS

35. The subject of judicial pensions came before the legislature this year. It attracted more attention than usual. The quite limited bill recommended in previous reports to permit retiring judges to allocate part of their pensions to their widows on an actuarial basis was again filed through this office. Other bills were filed relating to membership of judges in contributory pension plans, change in the optional retirement age, special contributory funds for widows and minor children of deceased judges.

36. It can safely be said that the present system of judicial pensions is not wholly satisfactory to anyone. To some the present non-contributory pension of seventy-five per cent seems unduly generous. To state it bluntly an important motive of this pension is to hold out an inducement to judges to retire at the age of seventy. Indeed, as to judges originally appointed from and after August 1, 1956, this inducement is made all the stronger by confronting them when they reach eligibility for retirement with the choice of retiring or forfeiting any pension. To others the complete absence of any provision for widows or dependent children of judges after their deaths is a bad feature, discriminating against judges and their families; the contributory system and many of the non-contributory plans make some sort of provisions for surviving dependents. There have been instances of judges who have died before reaching seventy, leaving widows or dependent children or both; in some instances these survivors are reported to have been left in poverty. It is also pointed out that the judicial salaries paid in Massachusetts still lag behind those paid in the United States courts and in the courts of some comparable states.

37. As a result of the discussion of the various proposed bills the committee on pensions and old age assistance reported out a new bill, House 2568. This bill is brief; its substance is that

present judges would be permitted to join the appropriate contributory pension plan by paying into the fund the contributions which would have been payable had they been members, and to require judges appointed hereafter to join the contributory system. So far as I am aware this is the first time any bill by which a judge could make provision of any kind for his dependents has been reported favorably.

38. While House 2568 appears on a first reading to be a relatively uncomplicated act, the problem is not as simple as it seems when applied practically to members of the judiciary. The contributory systems are established and regulated by a complex law, General Laws, chapter 32, sections 1 to 28F. In general this provides for contributions of five per cent of each member's salary. Benefits on retirement or death of a member depend to a large extent on length of service and consequent size of the contributions. Elaborate options are provided for sharing benefits with dependents, all based on actuarial computations. Actually, the contributions of five per cent support only a small part of the cost of the benefits and the administration of the systems; it is estimated that for the state as a whole these contributions carry about a sixth of the ultimate cost to the public. The amount of the allowance on retirement on reaching retirement age is specified by a formula. Without making this comment an actuarial treatise a member retiring on reaching the age limit for his group, after serving twenty years at a salary of \$10,000 a year would get a pension of \$4,950, and if a veteran he would get \$300 in addition. His total contributions for twenty years would be \$10,000. The highest retirement allowance permitted on regular retirement is eighty per cent of the average salary for the member's highest paid two years. To attain this about forty years of service would be needed. This brief statement is, of course, quite simplified. There are also detailed provisions for retirement allowances for disability, and still others for disability resulting from the performance of the member's duties. There is also a very recent addition to the law, Acts of 1958, chapter 614, adding section 12B to chapter 32, guaranteeing an arbitrarily fixed minimum to widows and dependent children of deceased members who have had at least five years' creditable service.

39. It can easily be seen that fitting judges into a contributory plan is not easy. To take the example given in the preceding paragraph, a present judge who has served twenty years with an average salary of \$10,000 would have to pay into the fund \$10,000 plus interest in order to join with full benefits. This might well be a good investment, but to be realistic about it a typical judge without

inherited wealth would be unlikely to have that amount readily available. When appointed judges are usually in middle age or even late middle age, whereas most career public employees enter the service while still young or in early middle age. Thus the prospect of a judge living long enough to build up any substantial pension under a contributory plan is less than that of the generality of other career officers and employees.* Separate treatment of judges would also have to be worked out to comply with the constitutional tenure during good behavior, usually called life tenure. It is a feature of all contributory systems that members must retire on reaching a definite age; at present this is sixty-five for police officers, firefighters and analogous classes, and seventy for others.

40. The financial effect of the admission of judges into the contributory plans would require an actuarial study. In this connection it is important to bear in mind that after the decisions in *Kinney vs. Contributory Retirement Appeal Board*, 330 Mass. 302, and *Roach vs. State Board of Retirement*, 331 Mass. 41, the rights of members were made contractual as to superannuation retirements, Acts of 1956, chapter 525, rewriting General Laws, chapter 32, section 25, clause 5. On the one hand, pensions paid chiefly by the public would become payable where there are none now, referring to instances of judges who die before reaching seventy leaving dependents. On the other hand, pensions to those judges who reach retirement age would with rare exceptions be much less than the present seventy-five per cent non-contributory pension; any judge who would have served so long as to become entitled to that rate in a contributory plan would necessarily have a short expectancy of life.

41. House 2568 was reported favorably by the committee on pensions and old age assistance and was referred to the house ways and means committee. The legislature thereafter referred the bill to the committee on judiciary. This committee has not taken action as this report is written and the legislature is still in session.

USE OF RETIRED JUDGES

42. Another matter related to pensions also came up at this session of the legislature. A bill, Senate 298, was filed which would introduce the system now in use in the federal courts of retiring judges at full pay subject to recall to active service, United States Code, Title 28, section 294. In my opinion such an idea is not likely to meet with legislative favor in Massachusetts. The judi-

*There are, of course, numerous public officers whose service is not expected to be a career, such as officers elected for terms, city solicitors and other categories. As to these, membership in a contributory plan is a piece of good luck.

ary committee reported adversely on it and the report was accepted. However, the general purpose of using retired judges when they are available is a good one. It was possible for some years as to retired superior court judges. See Acts of 1911, chapter 527, which became General Laws, chapter 32, section 61, and was repealed by Acts of 1931, chapter 426, section 142. During the time this law was in effect some retired superior court judges sat from time to time.

43. If the recall to temporary active service of retired judges is to be permitted legislation is required. Drafts of suggested bills are included in this report as Appendix III. The important features of these bills are as follows:

(a) They apply only to judges retired for superannuation, not to those retired for disability.

(b) While applicable to all seven of our courts retired judges can be recalled only to the courts from which they have retired.

(c) Compensation would be paid to a retired judge recalled for service at the same rate per diem as the salary of a judge in his court, from which would be deducted a similar per diem of his pension. Sundays and holidays are excluded from the calculation of the per diem. There are sixty-two days to be deducted, making three hundred and three compensable days a year. Thus, if the salary of a judge is \$15,000 a year the per diem rate is \$49.50. If he is retired his three-quarter pension is \$11,250, and the per diem of this is \$37.13. Thus, if he should sit as a retired judge recalled for service he would receive in addition to his pension the difference between \$49.50 and \$37.13, or \$12.37 a day. Under the suggested bills he would also be paid his expenses if he should sit in a place other than his residence.

(d) Under the suggested bills as shown in Appendix III service by a retired judge would be voluntary.

(e) Permissive recall of retired special justices of district courts is also provided for.

44. If the bills printed as Appendix III or similar ones should be passed it can reasonably be anticipated that some appreciable use can be made of retired judges at minor expense. The advantage of such use of retired judges would not be measured merely by the proportion which their days of service would make of the whole number of court days in the particular court involved. Rather this advantage is found in the possibility of being able to use a retired judge on short notice when needed to keep a court's business running smoothly. For example, if a judge were to be taken suddenly sick and other judges of the court were busy a retired judge could be called upon; thus the sittings in the court

could continue without interruption. Another example could well happen in the district courts; these are not geared to the hearing of lengthy cases, either civil or criminal, and with rare exceptions the duration of trials in these courts is a matter of hours at the most. When a long trial occurs there can be dislocation of the ordinary, day-to-day schedules of the court. On such occasions it would be most helpful to have available for service some retired judge. In the superior court the assignments throughout the court season are always tight; from time to time this court is confronted with the need of a special sitting to hear a capital trial, or an accumulation of specialized cases such as eminent domain petitions or zoning appeals, making it desirable to shift some one of the judges from his regular assignment. Under such conditions if a retired judge were available even for a few weeks no session would have to be suspended. Any suspension of a session in any court is unfortunate. Parties, witnesses and counsel will have made arrangements to attend and forced changes in plans may be very inconvenient to a large number of people. Passage of the bills as suggested in Appendix III, or acts along similar lines, is therefore recommended.

PRACTICE AND PROCEDURE

45. In last year's report, paragraph 39, it was recommended that answers in actions at law be abolished. Admittedly a radical departure from established custom, it nevertheless was favorably reported as to tort actions by the committee on judiciary, but was not enacted. Sooner or later it will be; meanwhile the bar can continue to explain as best they can how it happens that defendants in writing say they have paid the plaintiff, when in fact they have not paid him, do not intend to pay him, and claim that by law and justice they ought not to be compelled to; or why a defendant, again in writing should say that the plaintiff's car was illegally registered when in truth the plaintiff was a pedestrian struck by the defendant's car.

46. The recommendation to abolish attachments of wages and pensions, paragraphs 40 to 45 in the last report, resulted in a well-attended hearing before the committee on judiciary. As a result a compromise bill was reported and enacted, Acts of 1959, chapter 187. While not completely abolishing the attachment of wages, this act very nearly accomplishes the same result by raising the exemption to fifty dollars a week. While I would have preferred to see this type of attachment formally abolished, as has already been done in Texas, it is no little satisfaction that its practical use will

be greatly reduced. It was the opinion of a number of lawyers specializing in commercial cases that the change in the exemption will make a very large difference. In the course of the discussions several of the commercial law specialists expressed dissatisfaction not only with the attachment of wages but with some aspects of supplementary process. Some suggested the use of a garnishment proceeding, but only after entry of a judgment, by which a fraction of a judgment debtor's salary, depending on his family obligations, can be sequestered, with payment to be made through some public office. It is reported that such a system is in use in New York.

47. It will be noted that the greater part of this report is concerned with matters of procedure of one kind or other. For a discussion and procedural recommendations involving the new remanding law, see paragraphs 68 to 74; for recommendation relative to small claims jurisdiction, see paragraph 80; for a procedural amendment to the Uniform Reciprocal Enforcement of Support act, see paragraph 79; for discussion of assignment of counsel in criminal cases, see paragraphs 48 to 50; for recommendation of a change in the handling of interlocutory matters in full bench cases, see paragraphs 54 and 55.

CRIMINAL PROCEDURE AND RELATED MATTERS

48. The important subject of representation of indigent criminal defendants has continued to attract increasing interest. Rule 10 of the supreme judicial court has been applied, requiring that counsel be appointed in felony cases for those accused persons who cannot get a lawyer and who do not waive the right to be represented by counsel. Where the charitable corporation, the Voluntary Defenders, Inc., is in operation this has presented no great problem, as ordinarily lawyers on its staff can be assigned. But in those counties where this charity does not function it has developed into a burden on those lawyers capable of handling criminal cases. At present they must accept these assignments without pay—even without reimbursement for their expenses.

49. We again filed a bill to permit payment of some compensation to assigned counsel, House 478. This is a limited bill; it only makes provision for payment and counsel would continue to be assigned by the superior court under Rule 10 as each occasion arises. There was also filed, as in previous years, a bill to set up a comprehensive system of public defenders, with offices in each of the districts electing district attorneys. Under this bill the defender would be a sort of opposite number to the district attorney.

A third bill, House 702, was filed by Representative Edmond J. Donlan, Edward J. Duggan, Esquire, and others. This provides for an unpaid committee of eleven, appointed by the chief justice of the supreme judicial court. Its duty is to provide counsel for indigent criminal defendants according to its best judgment and to disburse such money as may be appropriated by the legislature for that purpose. This bill has the merit of relieving the superior court of the burdensome obligation of assigning counsel, and, if a bill like House 478 should be passed, of approving compensation case by case. It also avoids the large expenses inherent in a public defender system. This expense is so high, even on a conservative estimate, that the system is not likely to be adopted here. The undersigned and the proponents of the public defender bill both concluded that House 702 is a more satisfactory solution of the problem than the other bills and therefore supported it.

50. This bill, House 702, was favorably reported by the judiciary committee and was referred to the house ways and means committee. The legislature has since referred it back to this committee with authority to make a study of it during the recess. I feel that one can be optimistic about the passage of this bill or something similar in the next session of the legislature.

51. While on the subject of criminal procedure and practice I regret to report that I see no increase in the number of lawyers able and willing to handle criminal cases.

52. By Acts of 1958, chapter 646, the legislature rewrote the so-called sex-offender law, General Laws, chapter 123A. The 1958 version retains the same general and basic purposes as the earlier versions, but with a number of changes in details. An important decision concerning this law was rendered recently in *Commonwealth vs. Page*, 1959 A.S. 915. This case held that it was not lawful to commit the respondent under the act so long as there was not actually in operation a treatment center within the scope of the law, and further held that on the record in the case the facility at the Concord correctional institution was not such a center. In rendering the decision the court assumed that the act as a whole is constitutional and is not criminal in nature. Since this decision a new center for carrying out the purposes of the law has been established at Bridgewater. Whether a satisfactory definition of the kind of person to whom chapter 123A is applicable has been worked out in the latest draft of the act remains to be seen. It is also to be noted that the 1958 rewriting keeps the abrogation of the rules of evidence in hearings on petitions for commitment brought under it; see section 5 of chapter 123A. Nor is any provision made

for payment of counsel assigned to represent indigent respondents, or to provide such counsel with any funds for investigation expense, or for that matter, any expenses at all.

COMMENTS ON THE VARIOUS COURTS

SUPREME JUDICIAL COURT

53. At the time this report has been completed (middle of July) the court is completely current with its full bench appellate cases, that is to say, all cases argued through and including the May sitting and all cases submitted through and including the month of June have been decided. Thus far one advisory opinion has been requested and rendered under the constitution.

54. It is desirable that the full bench should have to concern itself solely with its appellate work and with the furnishing of advisory opinions when requested as provided in the constitution. While the tendency in recent years has been to reduce the number of interlocutory matters dealt with by it there still remain some such matters which can only be heard by the full bench. These are as follows:

(a) Late entry of appeal or bill of exceptions, General Laws, chapter 211, section 11.

(b) Permission to claim appeal late from an equity decree of the single justice session of the supreme judicial court or of the superior court, chapter 214, section 28.

(c) Similar permission to claim appeal late from a decree of a probate court, chapter 215, section 15.

(d) Establishment of the truth of exceptions, under General Laws, chapter 231, section 117.

55. There is no real need for action by the full bench on these interlocutory proceedings.* They can be handled more conveniently and just as effectively in the single justice session. Almost invariably on the first day of the full bench sittings in Boston from October through May and the September lists in the western counties there will be one or more, usually more, of these motions or petitions. If they could be heard in the single justice session the parties would be better accommodated. As it is now if such matters arise after the May sitting in Boston they must wait until October, if on a Boston list, or until September, if eligible to be heard on a Worcester, Springfield, Northampton-Greenfield or Pittsfield list. A single justice sits once a week in Boston and is thus able to give

*These petitions are interlocutory in the sense that they are not perfected appeals or bills of exceptions, ready for argument on the merits before the full bench. However, if denied they ordinarily end the litigation.

speedy hearings on all interlocutory motions or petitions. We shall accordingly prepare a bill to shift the hearings on these matters to the single justice session and passage of a bill to accomplish this is recommended.

56. In connection with the work of this court there is another recommendation which does not require legislation but does require money. This is the expansion of the stenographic, secretarial and editing staff of the court. It needs hardly to be said that opinions by the full bench should come out after the cases have been argued or submitted with all reasonable promptness under the circumstances of each case and should be letter perfect. We have reason to be proud of the long record of the court in both respects, but in the opinion of the undersigned it is often accompanied by excessive pressure both on the judges and the clerical staff. The scale of salaries to be paid to the law clerks and the clerical staff should also be sufficient to give the court a reasonable chance to attract a qualified legal and clerical force. In my opinion it is not at present in such a position.

SUPERIOR COURT

57. This year, 1959, is the one hundredth anniversary of the creation of the superior court, by Acts of 1859, chapter 196, which took effect on July 1, 1859. It was celebrated by exercises in Boston on May first, including a reception by the governor to the judges and court attaches, a convocation in the house of representatives and a banquet that evening. It was further noted by exercises in the various counties.

58. During this past year the court suffered a great loss in the sudden death of Associate Justice Francis J. Good who had served with great distinction both in the municipal court of the city of Boston and in the superior court. Associate Justices Walter L. Collins, Thomas H. Dowd and Daniel T. O'Connell, all veterans of many years of valued service, have retired. During the year the following appointment have been made to the superior court:

Honorable John M. Noonan
Honorable Frank W. Tomasello
Honorable Edward O. Gourdin
Honorable August C. Taveira
Honorable John W. Coddaire, Jr.
Honorable Stanley W. Wisnioski
Honorable James L. Valley
Honorable Edward J. DeSaulnier
Honorable Robert Sullivan
Honorable Jennie Loitman Barron

59. I have already commented on the effect of the appointment of additional judges, as authorized by the 1958 legislature, paragraph 8.

60. The statistics show a net drop in the total entries of all kinds, civil and criminal, the increase in criminal and equity entries being a bit more than offset by the reduction in the law cases. On both the civil and criminal sides the cases coming in will be heavy, and this will exist as far ahead as can now be seen. The court now, after a hundred years, has finally been able to get a law clerk, but it can use two or three more to great advantage. Three or four such clerks working at the Boston headquarters would be of inestimable help to the whole court, both there and in other shire towns. To illustrate, at a recent sitting of two weeks without jury in one of the counties, the presiding judge brought away with him eighteen cases which had been heard during the sitting, all involving one or more legal contentions, and all submitted on briefs and arguments in writing after the oral submission. This is by no means an unusual result of a jury-waived session. Nor is the desirability of law clerks limited to help in jury-waived cases. It is common enough for jury trials to involve legal questions; while a law clerk would not be able to help a judge in most rulings on admissibility of evidence, which must ordinarily be decided rightly or wrongly on the spot, he would often be of immeasurable help in passing on motions for directed verdicts and requests for instructions to the jury in cases where complicated or novel issues are involved. It is worth noting that in the local United States Court each nisi prius judge may have a law clerk and in fact all but one do have such a clerk. There is a lack of sufficient stenographic and secretarial help to the court. Litigants would be still better served if the court's appropriation included funds to provide these aids, and the service would be well worth the comparatively small amounts needed annually. The superior court has quite properly been called the great trial court of the commonwealth, and the more smoothly, promptly and efficiently its trial work is administered the better for the whole community.

61. In some of our counties there is another handicap, which will bear continual repetition. This is the lack of suitable courtrooms in certain of the shire towns. It is acute in Cambridge, see paragraph 32. It can become acute in Boston; in fact, in June of this year every courtroom available to the superior court in the Pemberton Square courthouse was in use.

62. Acts of 1958, chapter 369, the "remanding" bill, has already been discussed, paragraphs 11 to 15. It is further treated from the

point of view of the district courts in paragraphs 68 to 74. I have commented on the use of auditors in motor torts and other types of cases in paragraph 10.

PROBATE COURTS

63. The most important development in the probate courts during the past year has been the completion and promulgation of a new set of rules, the first extensive revision since 1934. There are no radical changes, but there are a number of clarifications and changes in details, both on the probate and the divorce side. Lawyers having occasion to practice in these courts will do well to go through the new rules carefully. With the establishment of revised and uniform sets of forms and with the completion of the new rules the technical side of the probate courts is now well taken care of. Many variations in forms and procedure which had accumulated over the years should now be eliminated. This does not mean that variations in the application of discretion have been or ever will be eliminated, and discretion of all kinds is a necessary characteristic of much of the jurisdiction of these courts. They still remain essentially unorganized county courts.

64. The reports of the registers for the calendar year 1958 show slight change in the volume of cases other than domestic trouble matters. These last, both divorce and separation, show an increase. As the figures are those for the calendar year ending December 31, 1958, they do not reflect the effect, if any, of the "cooling-off" period provided for by Acts of 1958, chapter 162, now General Laws, chapter 208, section 6A. This did not take effect until January 1, 1959; it provides that no divorce libel shall be filed unless the parties have lived apart at least three months or unless the judge waives this requirement. It is too early now to try to appraise the effect of this new law; indeed, it is the type of law with sociological purposes to be served that needs some extended period in order to determine its effect or lack of it. Some registers noted that after the act took effect divorce libels dropped off but separation petitions increased in their counties.

65. While no official "log" is kept it is apparent that the time consumed in hearing various aspects of domestic cases is far more than their proportion of total entries and that this time consumption seems to increase steadily. In other words, the emphasis in the probate courts is slowly shifting from strictly probate matters, largely administrative and highly technical in nature, to domestic matters, sociological rather than legal, involving constant use of discretion. The judges are all becoming increasingly concerned about these family matters, particularly as they affect the inter-

ests of minor children. Present available means of protecting the interests of these unwilling participants in family discord, such as use of guardians or investigators, contempt proceedings, are good as far as they go. But they do not fully answer the needs. The contempt petition is a cumbersome, tedious affair, perhaps in many cases more valuable as a threat than in actual execution. One of the judges was able for a time to use a local probation officer to help collect support orders until an increase in his other duties caused him to stop. A frustrating problem the judges have to face is the divided custody order. They are painfully aware of how unsatisfactory such orders can be. They all too often lead to angry controversies between divorced or separated parents, to the great damage and prejudice to the children involved. These disputes rarely, if ever, involve any real legal problem but turn only on personalities, made all the worse when the children are old enough to understand what is going on and to take sides.

66. Movements emanating both from within and without the probate court system aimed at improving the situation must be expected. In fact, a bill was proposed at this session designed to make the probate courts official domestic relations courts. Any proposals should be studied with care. As far as the undersigned feels warranted in making any recommendations at present, the recommendation is that any expansion of jurisdiction over domestic matters be worked out within the framework of the existing court system.

DISTRICT COURTS

67. The "remanding" bill, Acts of 1958, chapter 369, effective September 1, 1958, is the most important event this year in the district court system. This same act, by sections 1, 1A and 2, also repealed the Fielding act; thus motor tort actions brought in the district courts are now removable only by the defendant and they may now be brought originally in the superior court. Some change has been shown this year in the net entries of law actions, down in the superior court, up in the district courts; undoubtedly this is due to some extent to the repeal. We have already discussed the remanding bill from the point of view of the superior court, paragraphs 11 to 15.

68. The bill presented a novel problem in Massachusetts. While references for trial or transfer of causes from one court to another were not entirely unknown, they were so limited in their application as to be curiosities when they happened.* The "remanding"

*This does not apply to the framing of jury issues in bills to reach and apply, where the principal defendant claims jury on the issue of his liability—for that matter surprisingly little availed of in actual practice.

law provides for transfers for trial in large volume. In handling the transferred and remanded cases the clerks and judges of the district courts have taken the initiative by putting them on lists for trial without requiring marking for trial by counsel. In some of the courts it was found feasible on occasion to provide special dates for them. The judges generally have followed the policy of granting continuances only for good cause and then only to definite dates. The result has been that in almost all of the courts by far the larger part of the cases received from the superior court had been disposed of at the end of the court season; of those still pending many were cases where for one reason or other, as death of a party, it is not possible to try them for the present. As already mentioned in paragraph 11, no district court has been overloaded and most of the judges and clerks believe their courts can handle still more of these cases and keep them current. They have all found the bar most cooperative.

69. As the application of the law got underway it is not at all surprising that some technical problems arose. These are discussed in the succeeding paragraphs.

70. As we now have the law the remedy of the loser in the district court if he still thinks well of his case or his defense is to request a retransfer to the superior court for trial with or without a jury. He cannot ask for a report to the appellate division on questions of law, according to the construction applied in the district courts with which the undersigned is inclined to agree. But there are some cases which turn only on questions of law, and in which the loser may well be content to present his arguments to the appellate division. There is no reason why he should not have the option.

71. The action of the superior court in sending the cases to the district courts is described as "transfer for trial." This has been construed as requiring trial of the case in the condition in which it comes from the superior court, and thus as not allowing for the filing of interrogatories, motions for specifications, motions to amend or other proceedings prior to trial. So long as the case remains in the district court there seems to be no reason why it should not be treated as a district court case for all procedural purposes. Except where a defeated party exercises his right of retransfer any judgment entered or execution issued either on settlement or after trial is that of the district court, not of the superior court. The suit is not in the district court for reference and report, like a case referred to an auditor, but is there for trial and consequent disposition unless retransferred.

72. There has been a difference of opinion about the effect of failure by one or both parties to appear at a trial and a finding based on such failure. Does the party against whom the finding is entered have a right to request retransfer to the superior court? Certainly the right to retransfer should be limited to those who appear in good faith and try their cases. Failure to appear should not result in the negligent being given a second chance nor in the astute being afforded an opportunity for procedural maneuvering or delaying tactics.

73. Another contingency, probably rare in actual practice, has been discussed. On the facts of a particular case it may be contended that a plaintiff has not made out a case or that a defendant has not shown a valid defense. The trial judge, however, may not agree with counsel's view of the law and may enter a finding against him, for the plaintiff or defendant as the case may be. According to the statute this finding, thought by the losing party to be wrong, is *prima facie* evidence if the case is retried in the superior court. Thus, it is argued, the aggrieved party would not be entitled to a directed verdict, if tried to a jury, or a verdict as matter of law on an appropriate request for ruling if tried before a judge without jury. I believe the simplest way to deal with this contingency is to afford the complaining party the opportunity to present his argument on the legal question to an appellate division. If they say he is wrong but he still thinks he is right he can take a further appeal to the supreme judicial court. If either the full bench or the appellate division agrees with him the case will go back to the district court for the entry of a finding in his favor. Then it will be his opponent who, if he seeks retransfer, will be faced with a *prima facie* case against him. The finding of the trial judge in the district court after he has gone to the trouble of hearing the evidence and arguments of counsel ought to have some significance. Trials *de novo* should not be encouraged.

74. Amendments to clarify the doubtful matters discussed in the preceding paragraph are suggested in Appendix IV. I am not categorical on these suggestions; it may well be that they are capable of improvement.

75. As recommended by the undersigned the subject of the use of juries of six on a voluntary basis in the district and municipal courts was referred to the judicial council for study, Resolves of 1959, chapter 9. The juries of six in the Worcester central court continue to be well patronized by the local bar. By Acts of 1959, chapter 277, the authorization to hold these sessions in the court

has been extended to July 1, 1961. Motor tort cases make up the majority of the cases on the lists, but a substantial minority of contract and general tort liability cases are also included. There is no provision for the attendance of an official stenographer but Judge Arthur T. Garvey, who has presided over the session, uses a tape recorder.

76. What with the introduction of the full-time system in the municipal court of the city of Boston and the district courts, the use of district court judges to preside over trials of misdemeanors and motor torts in the superior court and the "remanding" act, there is no doubt that the importance and prestige of the whole district court system has increased in recent years. The use of our available judicial manpower is now better balanced. It is fitting to point out here the availability in the district and municipal courts of many judges well grounded in the law and experienced in its practical application to controversies. I fear that this is something not as well appreciated by the public as it should be, and, indeed, by the bar itself. That the talent of these judges is now being used more is a distinct advantage to the whole enterprise of affording justice to the citizens.

77. Again this year the district courts have never missed an assignment nor has the emergency power to use other than full-time judges for civil sessions been used. As experience has developed in various courts it has seemed advisable to the administrative committee to provide additional sittings to keep current with case-loads, civil and criminal. We continue to be indebted to the committee and its chairman, Judge Kenneth L. Nash, for the smooth operation of the whole system. The second district court of Barnstable sitting at Provincetown and Harwich has now been included in the courts where civil cases can be heard only by a full-time judge, Acts of 1959, chapter 77. This leaves only the district courts at Nantucket and Edgartown as survivals of the part-time system.

78. All this brings up the question, referred to in last year's report, paragraph 75, whether there should be some increase in the number of full-time district court judges. In the district courts other than the municipal court of the city of Boston there are now forty-two of the full-time judges. Of necessity not all of them are available at all times, having in mind the inevitable incidence of sickness and disability in a group of men of middle age or older. Even under the best of conditions the schedules of the forty-two judges covering seventy-two courts are tight. Nor should it be overlooked that the rendering of justice in district courts must be

prompt, whatever may be given as excuses, plausible or otherwise, for delays in superior court jury lists. The bogging-down of any district court simply cannot be tolerated. I believe also that the ideal to be striven for is the ultimate hearing of all contested litigation, civil or criminal, by men who are judges and judges only. That the ideal may not be realizable in the immediate future should not blind us to the fact that it is the goal to be sought in the end. Having observed the system in operation during the last two court seasons and discussed it with the administrative committee from time to time, I now recommend that a minimum of three more full-time judges be added to the district court system. I definitely recommend that one of the presiding judges of the five courts composing the semicircle of East Brookfield, Webster-Southbridge, Whitinsville-Uxbridge-Blackstone, Milford and Westboro in Worcester county be made a full-time judge. Other locations can be left for further discussion and analysis. Bills to make the Newton district court and the second district court of Plymouth at Hingham and Abington full-time courts, effective January 1, 1960, were passed in the last session of the legislature.

79. The Uniform Reciprocal Enforcement of Support act continues to be applied effectively in the district courts. It has been before the full bench recently in *Keene vs. Toth*, 335 Mass. 591, *Phillips vs. Phillips*, 336 Mass. 561, and *Kirby vs. Kirby*, 1959 A.S. 9. The first two cases establish that the law is constitutional and is civil, not criminal, in character. The opinion in the *Kirby* case poses certain procedural problems. It holds that there must be evidence in the district court to support a finding of the existence of the duty to support, of failure to furnish the required support, and of the unreasonableness of such failure. It further holds that the petition and record sent from the forwarding state are not evidence. The testimony which would warrant a finding of liability could be furnished by the petitioning wife or mother in person or by a deposition in her place of residence. But both these methods involve some expense, and it is inherent in these cases almost without exception that the petitioner is in needy financial circumstances. Also, the respondent can be summoned to the district court and there interrogated, and if he is employed the records of his employer can be brought in. But there is a gap. If some absconding husband or father should refuse to answer on the ground that it might incriminate him of a violation of General Laws, chapter 273, section 1, a case might be left without affirmative evidence on which the trial court could base a finding of liability. Employment records if available would only establish the income and earning capacity of the respondent; these are im-

portant evidential links but they are not necessarily conclusive of the existence of the ultimate liability. To bridge this gap and to the end that a matter of practical difficulty should not lead to any impairment of the important social and economic purposes of the law, it is hereby recommended that the records of the transmitting courts which contain a sworn statement by the petitioner be made prima facie evidence of the duty to support, of failure to furnish it and of the unreasonableness of such failure. See Appendix V for draft of an amendment. There is nothing startling about this. Any husband or father complained of for non-support should expect to show, if he denies liability, that he does in fact furnish support, or that his circumstances are such that he cannot, or that under the facts in the case the duty itself does not exist. As the act is a uniform act any amendment should be approached with caution and the experience in other states checked and analyzed. I will welcome any comments and suggestions from those interested in the operation of this law, either within or outside Massachusetts.*

80. The use of the small claims procedure is on the increase in many of our courts. It involves some detailed paper work in the clerks' offices but they are all convinced that it renders a valuable service to the public. This value is measured not merely by the number of cases, but in the fact that there exists a speedy, informal and inexpensive method of having an impartial man clothed with judicial authority pass on disputes not large enough to justify the more formal and expensive trial of a writ. Those interested in studying human relations should make it a point to see a small claims session in actual operation. In 1953 the jurisdictional limit was increased to \$75. I recommend a further increase and suggest the figure of \$100—and if the legislature should feel it proper to fix a limit a bit higher I would not object at all to it. Of all the functions of the district and municipal courts the small claims jurisdiction is the least publicized, but it is nevertheless one of the most useful. See Appendix VI for draft of amendment to increase the maximum of this jurisdiction.

MUNICIPAL COURT OF THE CITY OF BOSTON

81. Except as to the judges going on circuit to preside in courts other than their own the observations on the district courts apply generally to the municipal court of the city of Boston. As was expected this court received a substantial number of cases under the "remanding" law, something over 1300 by the end of the season. The handling of them has been eminently successful. The

*I am already indebted to Judge Arthur T. Garvey of Westfield for a thoughtful memorandum on this subject.

court has kept well current with the volume by putting them on lists for trial. Many settlements have been reported and thus far the proportion of losers requesting retransfer has been small. To the time of the preparation of this report no verdicts over \$1,000 had been reported in any of the remanded cases. The lawyers have been cooperative and the whole program has run along smoothly. I believe the court can conveniently handle more of these cases.

82. The administration of the non-criminal parking violations presents a peculiar problem in this court, with its jurisdiction over the congested downtown and Back Bay areas of Boston. In any year the court can expect from 275,000 to 350,000 of them. Unless and until the Boston parking problem is solved or at least improved in part the clerks will have to endure this burden. This same burden is encountered in many of the other courts to some extent, but it is particularly acute in Boston. Storage of the parking violation tickets has also in the past been an annoying problem. Permission to destroy old tickets has now partially relieved this difficulty.

LAND COURT

83. Acts of 1959, chapter 105, has made an important change in one phase of the land court's jurisdiction. It took effect on March 20, 1959. The Soldiers' and Sailors' Civil Relief act, United State Code, Title 50, section 532, was implemented in Massachusetts by Acts of 1943, chapter 57. Among other matters it made regulations about the foreclosure of mortgages. Petitions for leave to foreclose can be brought in the superior court or the land court. In *Lynn Institution for Savings vs. Taff*, 314 Mass. 380, the supreme judicial court held that in an equity petition for leave to foreclose under the act controversies other than the existence of an interested party in the military service could be heard and decided. Although the petitions as originally filed seek only leave to foreclose some of them have developed into general equity cases involving disputes as to accountings, extent of the property covered by the mortgage, counterclaims for affirmative relief against the petitioner, between parties not in the military service at all. By the new act jurisdiction on these petitions is now limited to the determination of the existence of interested persons in the armed services and their rights under the circumstances of the case. With rare exceptions this issue is simple and can be promptly determined one way or the other.

84. The volume of matters requiring action by the court, either contentious or administrative, continues to be heavy. Activity in the real estate and construction industries is reflected in the

increasing demand for the services of the court in many ways. Although the problem of obtaining and keeping competent employes, either clerical or engineering, is perhaps not as acute as a few years ago, it still exists. The work of this court, as needs hardly to be said, is extremely exacting. A margin for error simply does not exist. The court is still not in a good competitive position as against private industry.

85. Again this year no payments have been made from the assurance fund. This has now reached a total of over \$400,000.

JUVENILE COURT OF THE CITY OF BOSTON

86. The organization, administration and procedure of this specialized court present no difficulties. Its problems are of a sociological character, and they are numerous, almost infinite. It can almost literally be said that every case which comes in presents some new variation of trouble. Its statistics do not make pleasant reading. Its quarters improve gradually but still leave much to be desired. They are the best that can be done for the court in the present courthouse.

RECORDING OF COURT PROCEEDINGS

87. An important aspect of proceedings in a court is the preservation of a record of what goes on. The most retentive and phenomenal memory could not possibly recall all that was said and done even for one day. In my opinion the facilities of our courts for preserving these events can be improved, and at no great expense. In the supreme judicial court single justice sessions, the superior court sessions for trials on the merits in civil cases and for trials of felonies on the criminal side, and in the probate court in Suffolk county an official stenographer is present; in the other probate courts and in the land court parties may have the attendance of a stenographer on application. It is not customary to have this service in sessions of the superior court hearing interlocutory matters, in misdemeanor sessions or in the municipal and district courts. (There are a few minor exceptions, such as the authority to hire a stenographer in a district court election inquest.) To provide a permanently appointed stenographer at all these sessions, whether on an annual salary or on a per diem basis, would involve substantial public expense. It is, nevertheless, desirable that some better provision be made for recording proceedings than such notes as a judge, clerk or lawyer can jot down as matters are in progress. A judge naturally wants to concentrate on what a witness or attorney is saying. A lawyer while examining or arguing cannot

possibly take notes, and he may or may not have an assistant with him. If his opponent is examining he should concentrate on the questions being asked and on what the witness is saying. Clerks would rarely be in a position to take continuous notes, and taking any would be an impossibility in an interlocutory session.

88. In recent years the technique of preserving what is said by means of recording devices has been much improved. It is reported that some official reporters in various state and federal courts make use of them as a further check on their notes. While none of the instruments fully equals the performance of a highly skilled court stenographer, particularly where more than one person speaks at the same time, they make a record which is satisfactory enough in most cases. I have mentioned in paragraph 75 that such a recording device is in use in the six-man jury session in the Worcester central district court; Judge Joseph B. Harrington of the first district court of Essex at Salem now uses one and reports very satisfactory results from it.

89. There is no need to keep tapes, discs or cylinders permanently; in most cases they would not have to be kept for more than a few days. For example, if a civil case is heard in a district court and no report is requested nor is a motion for a new trial filed there would be no need of preserving the record after the case had gone to judgment. I therefore recommend that in court sessions where an official reporter is not present some form of recording machine be installed and that the various courts seek appropriations for this equipment.

COMPLAINTS

90. Complaints this year were fewer in number than in the two preceding years. There were a few miscellaneous complaints, also a few involving delayed decisions. It is pleasing to report that there was no complaint reflecting on the honesty of any judge or court attache. We had the inevitable few dissatisfied litigants who demanded that this office see to it that some judge should forthwith reverse his decision.

Respectfully submitted,

JOHN A. DALY,
Executive Secretary

301 NEW COURT HOUSE
BOSTON, MASSACHUSETTS

APPENDIX I

AN ACT TO EXTEND THE PERIOD OF TIME FOR USE OF DISTRICT COURT JUDGES TO SIT IN THE SUPERIOR COURT ON TRIALS OF MOTOR TORT ACTIONS AND TO MAKE PERMANENT THE USE OF DISTRICT COURT JUDGES TO PRESIDE IN THE SUPERIOR COURT ON TRIALS OF MISDEMEANORS

Be it enacted, etc.

Chapter 472 of the Acts of 1956 is hereby amended by striking out section 2 thereof and by inserting in place thereof the following section 2:

SECTION 2. With respect to the use of district court judges at the trial or disposition with or without jury of any motor vehicle tort action in the superior court this act shall not be operative after September first, nineteen hundred and sixty-six, except that any justice sitting in the superior court upon such motor tort case pursuant to this act at the trial of any such case prior to such date, shall continue thereafter upon assignment by the chief justice of the superior court to have and exercise all the powers and duties granted to him by this act in the disposition of such case.

APPENDIX II

COMPUTATION OF THE COSTS OF
OPERATING THE COURTS

The following sources of information furnished the bases for determining the cost of administering and operating the various courts of the commonwealth.

1. Public Document No. 29 (Annual Report on the statistics of county finances for the year ending December 31, 1958, Bureau of Accounts, Department of Corporations and Taxation).

2. House Bill No. 2563, 1959 session (estimates of county receipts and expenditures for the year ending December 31, 1959).

3. Budget Recommendations of His Excellency, Governor Foster Furcolo for the fiscal year beginning July 1, 1959, and ending June 30, 1960.

4. Financial Report of Comptroller of the Commonwealth, Frederick J. Sheehan, for the fiscal year ending June 30, 1958.

5. City of Boston and County of Suffolk Budget Recommendations for the fiscal year 1959.

6. Summary of receipts and expenditures for the fiscal year ending December 31, 1958, developed from the records of the Auditing Department, City of Boston.

7. Records of Real Property Division of City of Boston (material developed by personal contact and conference).

8. Records of County Commissioners and Treasurers examined.

The following schedules indicate the cost of operating our courts in the last twelve-month reporting period. They show an increase of about 7½% over the last period.

This is the first year in which the state has assumed the expense of the probation officers in the superior court. This results in a somewhat larger increase in the total state costs and a correspondingly smaller rate of increase in the counties and city of Boston.

We have included a more detailed itemization of the superior court costs to the counties. These are taken from the original figures of the county financial returns. Certain parts of the expenses of the district attorneys are viewed by the county officials as attributable to the courts and we have accepted these items.

In paragraph 80 of the first report of this office it was noted that outside of Boston the cost of pensions was not included. They are also not included in the following schedules. However, if one adds about four per cent to the final total he will come quite close to what ought to be pension cost attributable to the courts.

NET COST OF COURTS PAID BY THE COMMONWEALTH

For Fiscal Year Ending June 30, 1958

Supreme Judicial Court	\$ 312,398.92
Superior Court	889,062.56
Probate and Insolvency Courts	537,328.76
Land Court	221,735.68
Board of Bar Examiners	18,285.43
Judicial Council	7,300.00
Administrative Committee of District Courts	13,999.85
Pensions (Retired Judges)	107,238.24
Board of Probation	511,201.03
Suffolk County Courthouse Maintenance	207,511.61
(Acts of 1935, Chapter 474)	
GRAND TOTAL	\$2,826,062.08

SUPREME JUDICIAL COURT

Justices' Salary	\$155,000.00
Justices' Travel	2,700.00
Clerk's Salary	14,300.00
Clerical Assistance to Clerk	4,204.00
Clerical Assistance to Justices	60,169.24
Court Expenses	9,000.00
Court Officers and Messengers	6,602.56
Clerk for Suffolk County Salary	1,500.00
Social Law Library	3,500.00
Office of Executive Secretary	30,572.03
Reporter of Decisions Salary	10,000.00
Reporter of Decisions Clerical Assistance and Expenses	16,160.89
Total (Gross)	313,708.72
Less—Receipts	—\$1,309.80
TOTAL (NET)	\$312,398.92

SUPERIOR COURT

Justices' Salaries	\$607,416.67
Justices' Travel	28,758.40
Assistant Clerk (Suffolk County)	1,500.00
Court Expenses	28,717.00
District Court Justices in Superior Court, Salaries	108,610.40
District Court Justices in Superior Court, Expenses	24,805.93
Special District Court Justices	89,367.76
(G. L., C. 212, S. 14E)	
Total (Gross)	889,176.16
Less—Receipts	—\$113.60
TOTAL (NET)	\$889,062.56

PROBATE AND INSOLVENCY COURTS

Judges' Salaries (Additionalittings)	\$ 4,000.00
Judges' Expenses (Additionalittings)	766.26
Reimbursement for Official Bonds	453.00
Administrative Committee Expenses	499.75

\$ 5,719.01

BARNSTABLE COUNTY

Judge's Salary	\$ 11,500.00
Register's Salary	7,150.00
Assistant Register's Salary	4,950.00
Clerical Assistance to Register	11,434.35

\$ 35,034.35

BERKSHIRE COUNTY

Judge's Salary	\$ 11,500.00
Register's Salary	7,700.00
Assistant Register's Salary	5,500.00
Clerical Assistance to Register	17,907.30

\$ 41,607.30

BRISTOL COUNTY

Judges' Salaries (2)	\$ 26,000.00
Register's Salaries	9,350.00
Assistant Registers' Salaries (2)	12,650.00
Clerical Assistance to Register	47,656.41

\$ 95,656.41

DUKES COUNTY

Judge's Salary	\$ 4,500.00
Register's Salary	4,950.00
Clerical Assistance to Register	3,145.92

\$ 12,595.92

ESSEX COUNTY

Judges' Salaries (2)	\$ 26,000.00
Register's Salaries	9,900.00
Assistant Registers' Salaries (3)	19,415.87
Clerical Assistance to Register	54,823.86

\$ 110,139.73

FRANKLIN COUNTY

Judge's Salary	\$ 11,500.00
Register's Salary	7,150.00
Assistant Register's Salary	4,950.00
Clerical Assistance to Register	7,218.15

\$ 30,818.15

HAMPDEN COUNTY

Judges' Salaries (2)	\$ 26,000.00
Register's Salary	9,350.00
Assistant Registers' Salaries (3)	18,150.00
Clerical Assistance to Register	46,518.41

\$ 100,018.41

HAMPSHIRE COUNTY

Judge's Salary	\$ 11,500.00
Register's Salary	7,150.00
Assistant Register's Salary	4,950.00
Clerical Assistance to Register	7,512.15
	<hr/>
	\$ 31,112.15

MIDDLESEX COUNTY

Judges' Salaries (3)	\$ 43,500.00
Register's Salary	7,939.13
Assistant Registers' Salaries (5)	33,959.33
Clerical Assistance to Register	137,384.14
	<hr/>
	\$ 222,782.60

NANTUCKET COUNTY

Judge's Salary	\$ 4,500.00
Register's Salary	4,950.00
Clerical Assistance to Register	3,116.67
	<hr/>
	\$ 12,566.67

NORFOLK COUNTY

Judges' Salaries (2)	\$ 29,000.00
Register's Salary	9,900.00
Assistant Registers' Salaries (3)	19,800.00
Clerical Assistance to Register	51,466.21
	<hr/>
	\$ 110,166.21

PLYMOUTH COUNTY

Judge's Salary	\$ 11,500.00
Register's Salary	7,700.00
Assistant Register's Salary	5,500.00
Clerical Assistance to Register	25,254.85
	<hr/>
	\$ 49,954.85

SUFFOLK COUNTY

Judges' Salaries (3)	\$ 45,750.00
Register's Salary	11,550.00
Assistant and Deputy Assistant Registers' Salaries (7)	34,650.00
Clerical Assistance to Register	163,340.58
	<hr/>
	\$ 255,290.58

WORCESTER COUNTY

Judges' Salaries (2)	\$ 26,000.00
Register's Salary	9,900.00
Assistant Registers' Salaries (4)	25,167.69
Clerical Assistance to Register	51,992.21
	<hr/>
	\$ 113,059.90

Total (Gross)	1,226,522.24
---------------------	--------------

Less—Receipts	—\$689,193.48
---------------------	---------------

TOTAL (NET)	\$ 537,328.76
-------------------	---------------

LAND COURT

Judges' and Statutory Officers' Salaries ..	\$ 71,250.00	
Administration Expenses	248,835.72	
	<hr/>	
Total (Gross)		\$320,085.72
Less—Receipts		— 98,350.04
		<hr/>
Total (Net)		\$221,735.68

BOARD OF BAR EXAMINERS

Administration Expenses	\$ 35,340.03	
Less—Receipts	— 17,054.60	
	<hr/>	
Total (Net)		\$ 18,285.43

PENSIONS

Retired Judges	\$107,238.24
----------------------	--------------

JUDICIAL COUNCIL

Administration Expenses	\$ 7,300.00
-------------------------------	-------------

ADMINISTRATIVE COMMITTEE OF DISTRICT COURTS

Administration Expenses	\$ 13,999.85
-------------------------------	--------------

BOARD OF PROBATION

Office of Commissioner of Probation	\$238,733.26	
Salaries and Administration Expenses		
Committee on Probation	1,000.00	
Administration Expenses		
Probation Officers' Salaries*	271,467.77	
	<hr/>	
		\$511,201.03

SUFFOLK COUNTY COURTHOUSE

Maintenance (Acts, 1935, Chapter 474)	\$207,511.61
---	--------------

*(By Acts of 1956, C. 731, s. 29 compensation of probation officers appointed by the Superior Court are paid by the Commonwealth.)

SUFFOLK
CITY OF BOSTON
COUNTY COURT EXPENDITURES

SUPREME JUDICIAL COURT

Clerk's Office for Suffolk County		
Salaries & Expenses	\$93,277.36	
Less—Receipts		—\$1,792.65
Total (Net)		\$91,484.71

SUPERIOR COURT

General Expenses*		
Salaries & Expenses		\$104,188.38
Court Officers Division**		
Salaries & Expenses		365,943.52
Criminal Expenses		
Clerks & Clerical		
Assistants, etc.		
Salaries & Expenses ..	\$290,009.90	
Jurors (Fees, etc.)	94,882.25	
Witnesses (Fees, etc.) ..	88,777.11	
District Attorney's		
Office	231,208.12	
Probation Department	79,120.04	
	\$783,997.42	
Less—Receipts		—\$30,035.49
Total (Net) Criminal		\$753,961.93
Civil Expenses		
Clerks & Clerical		
Assistants, etc.		
Salaries & Expenses	\$583,037.24	
Masters	20,404.00	
Auditors	133,933.08	
Jurors (Fees, etc.)	292,863.30	
Total (Gross)	\$1,030,237.62	
Less—Receipts		—\$78,877.95
Total (Net) Civil		\$951,359.67
Total (Net) Superior		\$2,175,453.50

* (Stenographic and confidential messenger; also furnishes supplies, materials and equipment for both civil and criminal sessions.)

** (Deputy sheriffs and court officers; salaries, expenses, etc. for civil and criminal sessions.)

PROBATE AND INSOLVENCY COURT

General Expenses		
Salaries & Expenses	\$94,128.92	
Less—Receipts		—\$16.45
Total (Net)		\$94,112.47

MUNICIPAL COURT OF THE CITY OF BOSTON

General Expenses		
Salaries & Expenses	\$969,162.62	
Less—Receipts		—\$474,429.41
Total (Net)		\$494,733.21

MUNICIPAL COURT OF THE CHARLESTOWN DISTRICT

General Expenses

Salaries & Expenses	\$87,883.13
Maintenance*	9,212.83

Total (Gross)	\$97,095.96
Less—Receipts	—\$11,190.74

Total (Net)	\$85,905.22
-------------------	-------------

*(About one-half of building is used by Police Dept. and Civil Defense; heating expense is paid by Police Dept.)

EAST BOSTON DISTRICT COURT

General Expenses

Salaries & Expenses	\$88,244.84
Maintenance*	20,339.55

Total (Gross)	\$108,584.39
Less—Receipts	—\$13,443.76

Total (Net)	\$95,140.63
-------------------	-------------

*(Building used 100% by Court; Police Dept. supplies heat; Operating Personnel charged to Boston Real Property Division.)

MUNICIPAL COURT OF THE SOUTH BOSTON DISTRICT

General Expenses

Salaries & Expenses	\$86,537.56
Maintenance*	17,744.61

Total (Gross)	\$104,282.17
Less—Receipts	—\$18,145.99

Total (Net)	\$86,136.18
-------------------	-------------

*(Building used as a municipal building; courthouse, gymnasium, etc.; court uses about one-third.)

MUNICIPAL COURT OF THE DORCHESTER DISTRICT

General Expenses

Salaries & Expenses	\$144,715.87
Maintenance*	29,589.74

Total (Gross)	\$174,305.61
Less—Receipts	—\$31,128.58

Total (Net)	\$143,177.03
-------------------	--------------

*(Building used 100% by court.)

MUNICIPAL COURT OF THE ROXBURY DISTRICT

General Expenses

Salaries & Expenses	\$322,760.79
Maintenance*	34,348.92

Total (Gross)	\$357,109.71
Less—Receipts	—\$91,336.46

Total (Net)	\$265,773.25
-------------------	--------------

*(Building used 100% by court.)

MUNICIPAL COURT OF THE WEST ROXBURY DISTRICT

General Expenses

Salaries & Expenses	\$110,769.96
Maintenance*	24,753.68

Total (Gross)	\$135,523.64
Less—Receipts**	—\$25,859.45

Total (Net)	\$109,664.19
-------------------	--------------

*(Building used 100% by court.)

**(\$2,113.11 of this amount was reimbursed by the State for special Justices, G. L., C. 212, s. 14E.)

MUNICIPAL COURT OF THE BRIGHTON DISTRICT

General Expenses

Salaries & Expenses	\$63,827.97
Maintenance*	26,158.53

Total (Gross)	\$89,986.50
Less—Receipts	—\$35,982.85

Total (Net)	\$54,003.65
-------------------	-------------

*(75% of building is used by court.)

DISTRICT COURT OF CHELSEA

General Expenses

Salaries & Expenses	\$96,728.29
Maintenance*	16,577.08

Total (Gross)	\$113,305.37
Less—Receipts	—\$16,055.90

Total (Net)	\$97,249.47
-------------------	-------------

*(About two-thirds of building is used by court.)

BOSTON JUVENILE COURT

General Expenses

Salaries & Expenses	\$122,830.77
Less—Receipts	—\$59.00

Total (Net)	\$122,771.77
-------------------	--------------

PEMBERTON SQUARE COURTHOUSE

Maintenance

Salaries & Expenses	\$691,782.98
Less Statutory share of Commonwealth	—\$213,740.09

Total (Net)	\$478,042.89
-------------------	--------------

SOCIAL LAW LIBRARY

General Expenses

Supplies & Materials	\$2,000.00
----------------------------	------------

MENTAL HEALTH

General Expenses

Less—Receipts	—\$4,480.90
---------------------	-------------

Total (Net)	\$59,325.32
-------------------	-------------

PENSIONS AND ANNUITIES

General Expenses*

\$103,812.94

*(This is annual payment to non-contributing members charged to Suffolk County for Judiciary, etc.)

SUFFOLK COUNTY

SUMMARY OF COURT EXPENDITURES

	<i>Gross</i>	<i>Net</i>
Supreme Judicial Court	\$ 93,277.36	\$ 91,484.71
Superior Court	2,284,366.94	2,175,453.50
Probate and Insolvency Court	94,128.92	94,112.47
Municipal Court of the City of Boston	969,162.62	494,733.21
Municipal Court of the Charlestown District	97,095.96	85,905.22
East Boston District Court	108,584.39	95,140.63
Municipal Court of the South Boston District	104,282.17	86,136.18
Municipal Court of the Dorchester District	174,305.61	143,177.03
Municipal Court of the Roxbury District	357,109.71	265,773.25
Municipal Court of the West Roxbury District	135,523.64	109,664.19
Municipal Court of the Brighton District	89,986.50	54,003.65
District Court of Chelsea	113,305.37	97,249.47
Boston Juvenile Court	122,830.77	122,771.77
Pemberton Square Courthouse	691,782.98	478,042.89
Social Law Library	2,000.00	2,000.00
Mental Health	63,806.22	59,325.32
Pensions and Annuities	103,812.94	103,812.94
TOTAL	\$5,605,362.10	\$4,558,786.43

BARNSTABLE

COUNTY COURT EXPENDITURES

Clerk of Courts	
Salaries & Expenses	\$19,233.08
Registry of Probate	
Salaries & Expenses	7,887.18
Probate Court*	
Court Officers & Stenographers	1,862.64
Law Libraries	
Salaries & Expenses	3,377.38
Superior Court	
<i>Criminal</i>	
Court Officers & Stenographers	\$4,206.00
Probation Department	3,256.57
Jurors (Fees, etc.)	9,734.64
Witnesses (Fees, etc.)	4,659.20
District Attorney's	
Office	5,971.98
Misc. Expenses	1,977.66
	<hr/>
	29,806.05
<i>Civil</i>	
(Includes Supreme Ju- dicial & Land Cts.)**	
Court Officers & Stenographers	\$7,758.00
Jurors (Fees, etc.)	9,165.65
Auditors	3,406.50
Masters	2,623.50
Misc. Expenses	471.76
	<hr/>
	23,425.41

District Courts		
Salaries & Expenses		
(Includes courthouse rentals)	84,967.45	
Courthouse Maintenance & Operation ..	33,515.64	
Courthouse Bonded Debt Int. pd. 1958	8,201.55	
	<hr/>	
Total (Gross)		\$212,276.38
Less—Receipts		<hr/> —\$26,899.00
Total (Net)		<hr/> \$185,377.38
*(For accounting purposes this item appears in County Budget as expenditure of Superior Court.)		
** (Personnel and Services furnished by Superior Court.)		
Accounting formula is the same for all counties except Suffolk.		

BERKSHIRE

COUNTY COURT EXPENDITURES

Clerk of Courts		
Salaries & Expenses	\$24,167.28	
Registry of Probate		
Salaries & Expenses	6,995.15	
Probate Court		
Court Officers & Stenographers	874.88	
Law Libraries		
Salaries & Expenses	8,391.86	
Superior Court		
Criminal		
Court Officers & Stenographers	\$5,843.87	
Probation Department	822.06	
Jurors (Fees, etc.)	9,932.13	
Witnesses (Fees, etc.)	815.05	
District Attorney's Office	3,999.04	
Misc. Expenses	964.10	
	<hr/>	
		22,376.25
Civil		
(Includes Supreme Judicial & Land Cts.)		
Court Officers & Stenographers	\$7,134.00	
Jurors (Fees, etc.)	18,443.55	
Auditors	3,022.70	
Masters	851.00	
Referees	839.25	
Misc. Expenses	1,936.38	
	<hr/>	
		32,226.88
District Courts		
Salaries & Expenses		
(Includes courthouse rentals)	161,871.39	
Courthouse Maintenance & Operation	18,917.24	
	<hr/>	
Total (Gross)		\$275,820.93
Less—Receipts		<hr/> —\$67,651.00
Total (Net)		<hr/> \$208,169.93

BRISTOL

COUNTY COURT EXPENDITURES

Clerk of Courts		
Salaries & Expenses	\$69,981.92	
Registry of Probate		
Salaries & Expenses	12,074.13	
Probate Court		
Court Officers & Stenographers	6,039.72	
Law Libraries		
Salaries & Expenses	26,889.49	
Superior Court		
<i>Criminal</i>		
Court Officers & Stenographers	\$15,934.47	
Probation Department	15,536.84	
Jurors (Fees, etc.)	31,478.66	
Witnesses (Fees, etc.)	18,481.10	
District Attorney's Office	7,843.91	
Misc. Expenses	9,626.79	
	<hr/>	98,901.77
<i>Civil</i>		
(Includes Supreme Ju- dicial & Land Cts.)		
Court Officers & Stenographers	\$46,250.30	
Jurors (Fees, etc.)	75,708.07	
Auditors	10,503.00	
Masters	7,456.50	
Misc. Expenses	1,936.58	
	<hr/>	141,854.45
District Courts		
Salaries & Expenses (Includes courthouse rentals	317,352.70	
Courthouse Maintenance & Operation	139,139.20	
Courthouse Bonded Debt Int. pd. 1958	1,215.00	
	<hr/>	
Total (Gross)	\$813,448.38	
Less—Receipts		—\$114,682.20
Total (Net)		<hr/> \$698,766.18

DUKES COUNTY

COUNTY COURT EXPENDITURES

Clerk of Courts	
Salaries & Expenses	\$7,211.00
Registry of Probate	
Salaries & Expenses	3,007.00
Law Libraries	
Salaries & Expenses	641.85
Superior Court	
<i>Criminal</i>	
Court Officers & Stenographers	\$1,178.39
Jurors (Fees, etc.)	2,743.75
Witnesses (Fees, etc.) ..	424.69
District Attorney's Office	66.39
Misc. Expenses	425.71
	<hr/>
	4,838.93

Civil

(Includes Supreme Judicial & Land Cts.)

Court Officers & Stenographers	\$240.33
Jurors (Fees, etc.)	180.10
Misc. Expenses	172.94

593.37

District Courts

Salaries & Expenses

(Includes courthouse rentals)

14,235.53

Courthouse Maintenance & Operation

3,879.04

Courthouse Bonded Debt Int. pd. 1958

3,861.00

Total (Gross)

\$38,267.72

Less—Receipts

—\$2,155.00

Total (Net)

\$36,112.72

ESSEX

COUNTY COURT EXPENDITURES

Clerk of Courts

Salaries & Expenses

\$117,784.86

Registry of Probate

Salaries & Expenses

17,256.88

Probate Court

Court Officers &

Stenographers

18,963.17

Law Libraries

Salaries & Expenses

23,683.14

Superior Court

Criminal

Court Officers &

Stenographers

\$13,594.83

Probation Department

16,466.92

Jurors (Fees, etc.)

28,180.51

Witnesses (Fees, etc.)

8,889.90

District Attorney's

Office

17,019.94

Misc. Expenses

5,181.07

89,333.17

Civil

(Includes Supreme Judicial & Land Cts.)

Court Officers &

Stenographers

\$52,656.72

Jurors (Fees, etc.)

\$98,711.82

Auditors

38,608.16

Masters

5,425.64

Misc. Expenses

8,308.57

203,710.91

District Courts

Salaries & Expenses

(Includes courthouse rentals)

485,778.56

Courthouse Maintenance & Operation

133,821.76

Courthouse Bonded Debt Int. pd. 1958	5,315.62	
Total (Gross)	\$1,095,648.07	
Less—Receipts		—\$137,330.00
Total (Net)		\$958,318.07

FRANKLIN

COUNTY COURT EXPENDITURES

Clerk of Courts Salaries & Expenses	\$21,617.76	
Registry of Probate Salaries & Expenses	6,968.59	
Law Libraries Salaries & Expenses	7,466.49	
Superior Court Criminal Court Officers & Stenographers	\$ 228.00	
Probation Department	770.49	
Jurors (Fees, etc.)	5,703.17	
Witnesses (Fees, etc.)	791.05	
District Attorney's Office	3,201.86	
Misc. Expenses	1,788.20	
	12,482.77	
Civil (Includes Supreme Ju- dicial & Land Cts.) Court Officers & Stenographers	\$ 1,120.00	
Jurors (Fees, etc.)	11,853.53	
Auditors	1,389.45	
Masters	198.00	
Misc. Expenses	5,207.78	
	19,768.76	
District Courts Salaries & Expenses (Includes Courthouse rentals)	43,808.31	
Courthouse Mainte- nance & Operation ..	14,048.81	
Total (Gross)	\$126,161.49	
Less—Receipts		—\$14,075.00
Total (Net)		\$112,086.49

N.B. Probate Court officers and stenographers not enumerated.

HAMPDEN

COUNTY COURT EXPENDITURES

Clerk of Courts Salaries & Expenses	\$65,510.79
Registry of Probate Salaries & Expenses	20,600.59
Probate Court Court Officers & Stenographers	3,352.28

Law Libraries		
Salaries & Expenses	24,135.00	
Superior Court		
<i>Criminal</i>		
Court Officers &		
Stenographers	\$20,939.54	
Probation Department	4,605.99	
Jurors (Fees, etc.)	19,764.80	
Witnesses (Fees, etc.)	5,080.75	
District Attorney's		
Office	5,096.30	
Misc. Expenses	9,675.13	
	<hr/>	65,162.51
<i>Civil</i>		
(Includes Supreme Ju-		
dicial & Land Cts.)		
Court Officers &		
Stenographers	\$74,362.72	
Jurors (Fees, etc.)	101,205.40	
Auditors	22,453.20	
Masters	2,640.75	
Misc. Expenses	2,717.10	
	<hr/>	203,379.17
District Courts		
Salaries & Expenses		
(Includes courthouse		
rentals)	411,362.02	
Courthouse Maintenance		
& Operation	93,190.45	
Courthouse Bonded Debt		
Int. pd. 1958	1,540.50	
	<hr/>	
Total (Gross)	\$888,233.31	
Less—Receipts		—\$136,041.00
		<hr/>
Total (Net)		\$752,192.31

HAMPSHIRE

COUNTY COURT EXPENDITURES

Clerk of Courts	
Salaries & Expenses	\$21,313.47
Registry of Probate	
Salaries & Expenses	2,222.40
Probate Court	
Court Officers &	
Stenographers	3,602.00
Law Libraries	
Salaries & Expenses	6,533.16
Superior Court	
<i>Criminal</i>	
Court Officers &	
Stenographers	\$2,814.00
Probation Department	1,170.75
Jurors (Fees, etc.)	10,167.83
Witnesses (Fees, etc.)	1,460.57
District Attorney's	
Office	1,608.64
Misc. Expenses	1,790.74
	<hr/>
	19,012.53

Civil

(Includes Supreme Judicial & Land Cts.)

Court Officers &

Stenographers \$ 5,866.00

Jurors (Fees, etc.) 17,357.40

Auditors 1,597.50

Masters 2,070.00

Misc. Expenses 2,751.22

29,642.12

District Courts

Salaries & Expenses

(Includes Courthouse
rentals) 75,852.44

Courthouse Maintenance 15,728.02

Total (Gross) \$173,906.14

Less—Receipts —\$21,737.00

Total (Net) \$152,169.14

MIDDLESEX

COUNTY COURT EXPENDITURES

Clerk of Courts

Salaries & Expenses \$209,042.89

Registry of Probate

Salaries & Expenses 27,267.88

Probate Court

Court Officers &

Stenographers 36,952.48

Law Libraries 42,286.12

Superior Court

Criminal

Court Officers &

Stenographers \$89,746.60

Probation Department 39,161.46

Jurors (Fees, etc.) 82,185.00

Witnesses (Fees, etc.) 29,732.10

District Attorney's

Office 85,448.86

Misc. Expenses 32,670.06

358,944.08*Civil*

(Includes Supreme Judicial & Land Cts.)

Court Officers &

Stenographers \$157,089.44

Jurors (Fees, etc.) 217,660.30

Auditors 87,099.55

Masters 15,201.00

Commissioners 264.00

Misc. Expenses 18,227.69

495,541.98

District Courts

Salaries & Expenses

(Includes courthouse
rentals) 1,185,937.12Courthouse maintenance
& Operation 291,455.33

Total (Gross) \$2,647,427.88

Less—Receipts —\$327,692.00

Total (Net) \$2,319,735.88

NANTUCKET

COUNTY COURT EXPENDITURES

Clerk of Courts		
Salaries & Expenses	\$3,800.00	
Registry of Probate		
Salaries & Expenses	184.38	
Law Libraries		
Salaries & Expenses	352.60	
Superior Court*		
<i>Criminal & Civil</i>		
Grand Jury	\$436.70	
Probation Department	52.48	
Trial Jury	336.80	
Stenographer	397.67	
Sheriff & Deputies	331.05	
Witnesses	15.40	
Rent	40.00	
Misc. Expenses	117.86	
	<hr/>	1,727.96
District Courts		
Salaries & Expenses		
(Includes courthouse		
rentals)	10,128.14	
Courthouse Maintenance		
& Operation	1,253.84	
	<hr/>	
Total (Gross)		\$17,446.92
Less—Receipts		—\$2,353.25
		<hr/>
Total (Net)		\$15,093.67

*(No expenditures for Auditors, Masters, etc. Civil and Criminal expenditures not separated.)

NORFOLK

COUNTY COURT EXPENDITURES

Clerk of Courts	
Salaries & Expenses	\$57,032.02
Registry of Probate	
Salaries & Expenses	21,923.95
Probate Court	
Court Officers &	
Stenographers &	
Auditors	20,792.60
Law Libraries	
Salaries & Expenses	6,488.56
Superior Court	
<i>Criminal</i>	
Court Officers &	
Stenographers	\$13,056.00
Probation Department	12,987.59
Jurors (Fees, etc.)	31,319.10
Witnesses (Fees, etc.)	13,838.70
Service of Process Fees	17,811.40
District Attorney's	
Office	14,374.44
Misc. Expenses	6,214.43
	<hr/>
	109,601.66

Civil

(Includes Supreme Judicial & Land Cts.)

Court Officers & Stenographers	\$24,674.00	
Jurors (Fees, etc.)	50,831.35	
Auditors	64,673.20	
Masters	2,234.70	
Misc. Expenses	3,499.47	
		145,912.72

District Courts

Salaries & Expenses (Includes courthouse rentals)	456,955.09
--	------------

Courthouse Maintenance & Operation	152,405.09
--	------------

Courthouse Bonded Debt Int. pd. 1958	5,586.00
---	----------

Total (Gross)	\$976,697.69
---------------------	--------------

Less—Receipts	—\$115,675.00
---------------------	---------------

Total (Net)	\$861,022.69
-------------------	--------------

PLYMOUTH

COUNTY COURT EXPENDITURES

Clerk of Courts Salaries & Expenses	\$53,423.57
---	-------------

Registry of Probate Salaries & Expenses	11,879.64
---	-----------

Probate Court Court Officers & Stenographers	32,297.52
---	-----------

Law Libraries Salaries & Expenses	9,264.70
---	----------

Superior Court

Criminal

Court Officers & Stenographers	\$16,076.34	
Probation Department	11,309.88	
Jurors (Fees, etc.)	41,418.70	
Witnesses (Fees, etc.)	11,636.21	
District Attorney's Office	7,932.58	
Misc. Expenses	7,977.05	
		96,350.76

Civil

(Includes Supreme Judicial & Land Cts.)

Court Officers & Stenographers	\$ 7,253.36	
Jurors (Fees, etc.)	37,885.06	
Auditors	22,332.00	
Masters	1,955.00	
Misc. Expenses	14,504.77	
		83,930.19

District Courts

Salaries & Expenses (Includes courthouse rentals)	227,956.60
--	------------

Courthouse Maintenance & Operation	53,427.13	
Total (Gross)		\$568,530.11
Less—Receipts		—\$63,445.00
Total (Net)		\$505,085.11

WORCESTER

COUNTY COURT EXPENDITURES

Clerk of Courts		
Salaries & Expenses	\$144,784.35	
Registry of Probate		
Salaries & Expenses	17,924.56	
Probate Court		
Court Officers & Stenographers	8,448.99	
Law Libraries		
Salaries & Expenses	34,055.74	
Superior Court		
<i>Criminal</i>		
Court Officers & Stenographers	\$27,588.00	
Probation Department	16,500.00	
Jurors (Fees, etc.)	71,032.92	
Witnesses (Fees, etc.)	18,391.01	
District Attorney's Office	15,538.96	
Misc. Expenses	10,961.52	
	160,012.41	
<i>Civil</i>		
(Includes Supreme Ju- dicial & Land Cts.)		
Court Officers & Stenographers	\$108,487.19	
Jurors (Fees, etc.)	199,431.22	
Auditors	39,527.86	
Masters	2,840.41	
Misc. Expenses	721.75	
	351,008.43	
District Courts		
Salaries & Expenses (Includes courthouse rentals)	514,153.05	
Courthouse Maintenance & Operation	172,171.34	
Courthouse Bonded Debt Int. pd. 1958	33,422.40	
Total (Gross)		\$1,435,981.27
Less—Receipts		—\$170,686.00
Total (Net)		\$1,265,295.27

SUMMARY OF COSTS OF ADMINISTERING AND OPERATING ALL
COURTS IN THE COMMONWEALTH OF MASSACHUSETTS

	<i>Gross</i>	<i>Net</i>
Commonwealth of Massachusetts	\$ 3,632,083.60	\$ 2,826,062.08
Barnstable	212,276.38	185,377.38
Berkshire	275,820.93	208,169.93
Bristol	813,448.38	698,766.18
Dukes County	38,267.72	36,112.72
Essex	1,095,648.07	958,318.07
Franklin	126,161.49	112,086.49
Hampden	888,233.31	752,192.31
Hampshire	173,906.14	152,169.14
Middlesex	2,647,427.88	2,319,735.88
Nantucket	17,446.92	15,093.67
Norfolk	976,697.69	861,022.69
Plymouth	568,530.11	505,085.11
Suffolk	5,605,362.10	4,558,786.43
Worcester	1,435,981.27	1,265,295.27
	<hr/>	<hr/>
	\$18,507,291.99	\$15,454,273.35
Commitments*		293,077.97
		<hr/>
TOTAL		\$15,747,351.32

*(Total shown does not include Suffolk County. A portion of the expense attendant to commitments is a proper court expense, but to determine the actual judicial cost would require an examination of each and every voucher submitted for payment to the county treasurers in connection with commitments.)

APPENDIX III

BILLS TO PERMIT RECALL OF RETIRED JUDGES
FOR TEMPORARY ACTIVE SERVICEAN ACT TO PROVIDE FOR THE RECALL OF CERTAIN RETIRED JUSTICES
AND JUDGES FOR TEMPORARY ACTIVE SERVICE

Be it enacted, etc.

SECTION 1. Chapter 32 of the General Laws is hereby amended by inserting after section 65B the following new section 65C:

Section 65C. Any justice or judge of any of the courts of the commonwealth retired for superannuation under the provisions of section 65A of this chapter may, subject to his consent, be recalled for temporary active service in the court from which he shall have retired, except as otherwise provided herein.

(a) Such recall shall be made as follows:

If retired from the supreme judicial court, by the chief justice thereof;

If retired from the superior court, by the chief justice thereof;

If retired from a probate court, by the administrative committee of the probate courts, which may also authorize such recalled judge to sit in probate courts other than that from which he retired;

If retired from the land court, by the judge thereof;

If retired from the municipal court of the city of Boston, by the chief justice thereof;

If retired from a district court, by the administrative committee of the district courts, which may also authorize such recalled judge to sit in district courts other than that from which he retired, provided that no justice retired from a court in which full-time service is not required under General Laws, chapter 218, section 77A, shall be designated to hear civil cases required to be heard by full-time justices;

If retired from the Boston juvenile court, by the justice thereof.

(b) During such temporary active service the judge or justice thus recalled shall exercise all judicial power and authority pertaining to the judicial office to which he shall have been recalled and shall be available for and subject to the performance of any judicial powers, functions and duties of such office.

(c) A judge or justice recalled for temporary active service under the provisions of this section shall be compensated as follows:

For each day of service he shall be paid a per diem amount determined on the basis of the annual salary of the holder of the

judicial office to which he shall have been recalled at the time of his temporary active service. In calculating the per diem compensation Sundays and legal holidays shall be excluded. From the rate of per diem compensation thus determined there shall be deducted a similarly determined per diem of the pension payable to him. He shall also be reimbursed for expenses incurred during such temporary active service while sitting in any place other than his residence. The compensation and expenses payable to such retired judge shall be paid by the public body or bodies obligated to pay the compensation of the judge, judges or justices of the court or courts in which such retired judge shall perform temporary active service.

(d) The fact of temporary active service by a retired judge or justice under this section shall be stated on the records of the court, but need not be separately stated in the record or docket of any cause or proceeding acted upon by him.

(e) No retired judge or justice serving under the provisions of this section shall be counted in the number of judges or justices authorized or required for any of the courts by applicable statutes.

SECTION 2. This act shall take effect on

AN ACT TO PROVIDE FOR THE RECALL OF CERTAIN RETIRED SPECIAL JUSTICES OF THE MUNICIPAL COURT OF THE CITY OF BOSTON AND OF THE DISTRICT COURTS FOR TEMPORARY ACTIVE SERVICE

Be it enacted, etc.

SECTION 1. Chapter 32 of the General Laws is hereby amended by inserting after section 65D the following new section 65E:

Section 65E. Any special justice of the municipal court of the city of Boston and of a district court retired for superannuation under the provisions of section 65B of this chapter may, subject to his consent, be recalled for temporary active service.

(a) Such recall shall be made as follows:

If retired from the municipal court of the city of Boston by the chief justice thereof;

If retired from a district court, by the administrative committee of the district courts, which may also designate the court or courts in which such retired special justice may serve; and the administrative committee may also authorize temporary active service by a retired special justice of the municipal court of the city of Boston recalled by the chief justice thereof in such district court or courts as it may designate.

(b) During such temporary active service a special justice thus recalled shall exercise all judicial power and authority per-

taining to that office and shall be available for and subject to the performance of any judicial powers, functions or duties thereof.

(c) A special justice recalled for temporary active service under the provisions of this section shall be compensated as follows:

For each day of service he shall be paid the amount payable for service by a special justice in the court in which he shall perform such temporary active service. From such compensation there shall be deducted a per diem of the pension payable to him. In the calculation of the per diem of such pension Sundays and legal holidays shall be excluded. When applicable such retired justice shall also be reimbursed for traveling expenses incurred within the provisions of General Laws, chapter 218, section 81. The compensation and expenses payable to him shall be paid by the public bodies obligated to pay the compensation and expenses of special justices in the courts in which he shall serve from time to time.

(d) The fact of temporary active service by a retired special justice under this section shall be stated on the records of the court or courts in which he shall perform such service, but need not be separately stated in the record or docket of any cause or proceeding acted upon by him.

(e) No retired special justice serving under the provisions of this section shall be counted in the number of special justices authorized by applicable statutes in the court from which he retired.

SECTION 2. This act shall take effect on

AN ACT FURTHER REGULATING PAYMENT FOR PUBLIC SERVICES PERFORMED BY PERSONS RECEIVING PENSIONS AND RETIREMENT ALLOWANCES

Be it enacted, etc.

SECTION 1. Chapter 32 of the General Laws is hereby amended by inserting in the nineteenth line of section 91 after the words "in any year" the following, "or for services as a retired justice or judge recalled for active service under the provisions of sections sixty-five C and sixty-five E of this chapter," so that section 91 shall read as follows:

Section 91. No person while receiving a pension or retirement allowance from the commonwealth or from any county, city or town, shall, after the date of his retirement be paid for any service rendered to the commonwealth or any county, city, town or district, except upon his return and restoration to active service as ordered by the appropriate retirement board after re-examination

in case of retirement for disability, for jury service, or for service rendered in an emergency under section sixty-eight, sixty-nine or eighty-three, or for service in a public office to which he has there-after been elected by direct vote of the people, or for service rendered by an appointee under section sixteen of chapter two hundred and eight or section fifty-six A of chapter two hundred and fifteen, or for service as a member of the executive council after having been chosen or appointed under the provisions of Article XXV of the Amendments to the Constitution of the Commonwealth, or for service in a confidential capacity under section seven of chapter thirty in the executive department, or in the department of the state secretary, the state treasurer, the state auditor or the attorney general, or for service as a physician or as a member of a medical panel or similar board under this chapter aggregating not more than thirty days in any year or for services as a retired justice or judge recalled for active service under the provisions of sections sixty-five C and sixty-five E of this chapter; provided, that there shall be deducted from the compensation for the services of any person employed in a confidential capacity as aforesaid an amount equal to the retirement allowance or pension received by him. Notwithstanding the foregoing provisions of this section or similar provisions of any special law, a person who, while receiving such a pension or retirement allowance, is appointed for a term of years to a position by the governor with or without the advice and consent of the council or is appointed for a term of years to a position by the mayor or city manager of any city with or without confirmation by the city council or in Plan E cities is elected for a term of years to a position by the city council or is appointed to a position in a town and serves in such position under the direction of the selectmen thereof shall be paid the compensation attached to the position to which he is appointed or elected; provided, that he files with the treasurer of the governmental unit paying such pension or allowance, a written statement wherein he waives and renounces for himself, his heirs and his legal representatives his right to receive the same, for the period during which such compensation is payable. Notwithstanding the foregoing provisions of this section or similar provisions of any special law, a teacher, retired from the service of any city, town or district, may be employed as a substitute teacher by any of the political subdivisions of the commonwealth. Such employment shall not affect the pension rights or amount of pension of any such teacher, provided that the total annual salary received therefrom does not exceed one thousand dollars.

SECTION 2. This act shall take effect on

APPENDIX IV

AN ACT TO CLARIFY CERTAIN PROVISIONS OF THE LAW RELATING TO
TRANSFER OF ACTIONS FOR TRIAL BY THE SUPERIOR COURT TO THE
DISTRICT COURTS

Be it enacted, etc.

SECTION 1. Chapter 231 of the General Laws is hereby amended by adding after the words "such action" in the third paragraph of section 102C the words "shall unless retransferred as hereinafter provided be pending in the district court and", by inserting after the first sentence of the third paragraph of section 102C the following sentence, "The parties shall have the benefits of and be subject to procedural rules of such district courts relative to interrogatories, specifications, amendments and all other procedural matters regulating cases pending in such district courts", by inserting after the words "by the superior court" in the seventh line of said third paragraph of section 102C the words, "or may request a report to the appellate division; but if any party claiming to be aggrieved shall request retransfer to the superior court, the case shall be so retransferred notwithstanding a request for report by any other party; but the case shall not be retransferred until the request for report shall have been disposed of", by inserting after the words "to that effect" in the thirteenth line of said third paragraph the words, "and if both so fail to appear he may order that the action be dismissed", by inserting in the fifteenth line of said third paragraph after the words "such finding or decision", the words "or order of dismissal", and by adding to said third paragraph the words, "and no party thus failing to appear or to offer testimony shall have the right of report to the appellate division or of retransfer to the superior court", and by inserting in the third line of the fourth paragraph of section 102C after the words "from the superior court", the words "and any original papers filed in the district court after transfer of the case by the superior court", so that the third and fourth paragraphs of section 102C shall read as follows:

Section 102C. Such action shall unless retransferred as hereinafter provided be pending in the district court and shall be tried by a full-time justice of the district court or by a justice authorized for such service in accordance with section seventy-seven A of chapter two hundred and eighteen. The parties shall have the benefits of and be subject to procedural rules of such district courts relative to interrogatories, specifications, amendments and all other procedural matters regulating cases pending in such

district courts. The justice shall file a written decision or finding with the clerk who shall forthwith notify the parties or counsel of record. Any party to the action aggrieved by the finding or decision may as of right have the case retransferred for determination by the superior court or may request a report to the appellate division; but if any party claiming to be aggrieved shall request retransfer to the superior court, the case shall be so retransferred notwithstanding a request for report by any other party; but the case shall not be retransferred until the request for report shall have been disposed of. The request for retransfer shall be filed with the clerk of said district court within ten days after notice of the decision or finding. If either party neglects to appear at the time appointed for such trial, or at any adjournment thereof, without just cause, or if at any such time either party refuses to produce in good faith the testimony relied on by him, the justice may close the trial and order that judgment be entered for the adverse party and file a finding or decision to that effect, and if both so fail to appear he may order that the action be dismissed. Judgment shall be entered accordingly at the first judgment day after the expiration of ten days from the filing of such finding or decision or order of dismissal, unless said justice for cause shown otherwise orders, and no party thus failing to appear or to offer testimony shall have the right of report to the appellate division or of retransfer to the superior court.

Upon the filing with the clerk of a request for retransfer, the decision or finding shall be forthwith transmitted, with any original papers received from the superior court and any original papers filed in the district court after transfer of the case by the superior court, to the clerk of the superior court of the county from which the case was referred. The clerk of the superior court shall forthwith notify the parties or counsel of record of the receipt and filing of said finding or decision.

APPENDIX V

AN ACT RELATIVE TO PROOF OF ISSUES IN PETITIONS UNDER THE UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT, GENERAL LAWS, CHAPTER 273A

Be it enacted, etc.

Section nine of chapter two hundred and seventy-three A of the General Laws, as amended by chapter seventy-four of the acts of nineteen hundred and fifty-seven, is hereby further amended by adding at the end the following sentence:

A statement under oath or under the penalties of perjury made by the petitioner and contained in such petition shall so far as relevant constitute prima facie evidence on the issues of the existence of the duties to support defined in sections three and four, of the fact of failure to provide such support and of the fact of the unreasonableness of such failure.

APPENDIX VI

AN ACT TO INCREASE MAXIMUM JURISDICTION IN SMALL CLAIMS
PROCEDURE IN THE DISTRICT COURTS

Be it enacted, etc.

SECTION 1. Chapter 218 of the General Laws is hereby amended by striking out in the ninth line of section 21 the words "seventy-five" and by inserting in place thereof the words "one hundred", so that section 21 shall read as follows:

Section 21. The justices or a majority of them of all the district courts, except the municipal court of the city of Boston, shall make uniform rules applicable to said courts, and the justices of the municipal court of the city of Boston shall make rules applicable to that court, providing for a simple, informal and inexpensive procedure, hereinafter called the procedure, for the determination, according to the rules of substantive law, of claims in the nature of contract or tort, other than slander and libel, in which the plaintiff does not claim as debt or damages more than (seventy-five) one hundred dollars, and for a review of judgments upon such claims when justice so requires. The procedure shall not be exclusive, but shall be alternative to the formal procedure for causes begun by writ. Actions under this and the four following sections shall be brought in the judicial district where the defendant lives or has his usual place of business.

APPENDIX VII

STATISTICS OF THE WORK ACCOMPLISHED BY THE
VARIOUS COURTS

Tables and reports showing the work of the several courts during the latest twelve-month reporting period will be found in the following pages and inserts. The dates are not the same for all the courts; they run from September 1 for the supreme judicial court, from July 1 for the superior court, the land court, the municipal court of the city of Boston, the district courts, the Boston juvenile court, and from January 1 for the probate courts.

These statistics give an adequate picture of the work done, except in the case of the probate courts. As to these it is hoped that in the near future we shall be able to present some amplified statistics of these courts. Because of the nature of their jurisdictions it is difficult to show satisfactorily in statistical form the work accomplished in them.

Following is a consolidated summary of the court work, with a comparison of the same categories in the next previous reporting period.

CIVIL ENTRIES

	<i>This report</i>	<i>1958 report</i>
Supreme judicial court, law	873	809
Supreme judicial court, equity	53	55
	926	864
Superior court, law	32,245	34,545
Superior court, equity	4,638	4,485
	36,883	39,030
Land court	4,951	4,756
Probate courts, probate	31,572	31,593
Probate courts, divorce	8,524	8,368
Probate courts, commitments	1,707	1,890
	41,803	41,851
Municipal court of the city of Boston, net after removals	19,637	20,077
Municipal court of the city of Boston, sup- plementary process	1,282	1,305
Municipal court of the city of Boston, small claims	1,213	1,277
Municipal court of the city of Boston, recip- rocal support	96	84
	22,228	22,743
District courts, net after removals	66,968	63,717
District courts, supplementary process	25,837	24,713
District courts, small claims	68,192	68,281
District courts, commitments	5,540	5,680
District courts, reciprocal support	1,070	1,373
	167,607	163,764
Total civil entries	274,398	273,008

CRIMINAL ENTRIES

	<i>This report</i>	<i>1958 report</i>
Superior court, indictments	8,004	7,101
Superior court, actions on bail bonds	38	43
Superior court, complaints after waiver of indictment	66	147
	<hr/> 8,108	<hr/> 7,291
Municipal court of the city of Boston, general	46,208	49,785
Municipal court of the city of Boston, in- quests	1	1
	<hr/> 46,209	<hr/> 49,786
District courts, general	242,208	236,519
District courts, inquests	28	33
	<hr/> 242,236	<hr/> 236,552
Boston juvenile court	862	1,054
	<hr/> 297,415	<hr/> 294,683
Total criminal entries		

We thus have total entries, civil and criminal, of 571,813 this year, as against 567,691 last year. In addition, this year the Boston municipal court handled 297,432 parking tickets, the district courts 798,983, a total of 1,096,415. This compares with 1,224,782 last year; the drop indicates either a better observance of parking restrictions or a general slackening of the vigor of enforcement drives.

SUPREME JUDICIAL COURT

From September 1, 1958, to August 31, 1959, the full bench of the supreme judicial court decided 243 cases with opinions, 49 cases on rescripts, and rendered 1 advisory opinion under the constitution, a total of 293. As had been anticipated the volume of work again increased over the previous year. While it is still early in the current season, a further increase is likely this year. After this year it is probable that the volume of appellate work will tend to stabilize at from 275 to 300 cases a year. As always, the superior court was by far the largest source of the cases brought to the full bench. Of the 292 cases decided by the court, 31, or 11%, came from the trial court on report without decision, leaving 261 cases presented to the court after decision. Of these, in 94, or 36%, the lower court decision was reversed, in 159, or 61%, it was affirmed, and in 8, or 3%, it was affirmed with modification.

By counties, the origins of the appeals or exceptions are as follows:

Barnstable	8
Berkshire	6
Bristol	20
Dukes county	1
Essex	20

Franklin	2
Hampden	13
Hampshire	2
Middlesex	46
Nantucket	0
Norfolk	13
Plymouth	7
Suffolk	118
Worcester	36
TOTAL	292

Twenty-two of the cases were criminal appeals. These included the group of cases known as the "Brink's" case, arising out of the famous robbery of the garage of the Brink cash delivery company in Boston.

By courts the sources of the cases are as follows:

Supreme judicial court, single justice session, law	9	
Supreme judicial court, single justice session, equity	7	
		16
Superior court, law	159	
Superior court, equity	63	
Superior court, workman's compensation cases	8	
		230
Land court		5
Probate courts		26
Municipal and district courts		15
TOTAL		292

As of mid-July of 1959 all cases argued or submitted on briefs through and including the month of June had been decided and the opinions filed. The court was thus completely current with its appellate work.

SUPREME JUDICIAL COURT SINGLE JUSTICE SESSION FOR THE COUNTY OF SUFFOLK

I give below the report of the clerk of the supreme judicial court for Suffolk county. It shows the nisi prius work of the single justice session and the clerk's office. Except during the weeks of consultation and a few weeks in the summer months a single justice sits in Boston every Wednesday to hear a list of nisi prius cases, and is always accessible for emergency hearings or ex parte matters. This year one classification, the dissolution of corporations, showed a marked increase, more than double the previous year. I mention also a sharp increase in appeals from the appellate tax board, from 4 to 16; while this number sounds small, these cases are apt to involve highly complicated issues of law, particularly in the inter-

pretation of complex taxation statutes and their application to even more complicated sets of facts. The other classes of jurisdiction showed no great variation from last year.

REPORT OF CLERK FOR SUFFOLK COUNTY

<i>Transferred to Superior Court</i>	<i>Prerogative Writs</i>	<i>Petitions for admission to the Bar</i>
10	34	814
<i>Law Docket</i>		
Appeals from decisions of the Appellate Tax Board		16
Petitions for Admission to the Bar		814
Petitions for Writ of Certiorari		2
Petitions for Writ of Error		21
Petitions for Writ of Habeas Corpus		5
Petitions for Writ of Mandamus		5
Petition for Writ of Prohibition		1
Information brought by Massachusetts Bar Association		1
Petitions for Discharge on Recovery of Sanity, General Laws, chapter 123, section 91		4
Petitions under General Laws, chapter 211, section 3, Court Superintendence		2
Petitions to Stay Execution of Sentence		2
Total Law Entries		873
<i>Equity Docket</i>		
Bills and Petitions in Equity		16
Bills for Leave to Bring Late Claim Against Decedent's Estate, General Laws, chapter 197, section 10		2
Petitions for Leave to Appeal		8
Petitions for Declaratory Judgment		5
Petitions by Commissioner of Corporations and Taxation for Dis- solution of Corporations under General Laws, chapter 155, sec- tion 50A, about 4,915 Corporations		7
Petitions for Dissolution Brought by Individuals		2
Petition for Instructions		1
Petition for Leave to Reproduce Record		1
Petition for Review of Suspension of Doctor's License, General Laws, chapter 112, section 64		1
Petitions to Suspend or Modify Decree of Superior Court, General Laws, chapter 214, section 22		4
Petition to Review Insurance Premium Rates, General Laws, chapter 174A, section 18		1
Petition to Review Classification of Risks and Rates for Compulsory Motor Vehicle Liability Insurance		1
Petitions for Sale of Church Property, General Laws, chapter 204, section 12		3
Injunction, Labor Dispute, General Laws, chapter 214, section 9A		1
Total Equity Entries		53
Total Entries on Both Dockets		926

SUPERIOR COURT

The details of the work of the superior court in the past year appear on the two sheets inserted following these comments. On the civil side the law entries have dropped from 34,545 to 32,245, a decline of 2,300. I consider this large enough to be significant particularly as there has been an increase of some 3,000 entries in the district courts. There is, I believe, a connection between these two changes; it is undoubtedly to a large extent the combined effect of the repeal of the Fielding act and of the transfer or remanding law. The increasing prestige of the district courts as important civil trial courts and not merely police courts with a civil trial side line also must have some influence, even if it is more subconscious than openly reasoned out.

The superior court continued to make good progress in dispositions. At the end of the reporting year the number of cases still pending on the dockets was 43,765, down by 5,420. It is to be hoped that this reduction can be continued, as in the opinion of the undersigned the case-load per judge is still extremely high. Indeed, when we consider the increase in criminal entries and in equity cases the actual net reduction of the load is small. On the equity side both entries and cases remaining undisposed of have increased. This tendency has been noticeable during the past several years. In no one year has the increase in entries been spectacular but it has been steady. This feature will bear watching, for not only is the ratio of trials to entries considerably higher in equity than law, but the trials are apt to be longer and the post-trial work much longer. A much greater percentage of equity cases than law cases will be appealed to the supreme judicial court. See statistics of that court. The proportion of law appeals or exceptions to entries is less than $\frac{1}{2}$ of 1%, but in equity it is a bit over $1\frac{1}{3}\%$. There is thus every indication that the demand for sessions without jury will be more and more insistent.

The figures indicate that the trial bar continues to show a marked preference for trial by jury. Year in and year out it can be expected that from 70 to 75% of the trials at law will be to juries.

On the criminal side the entries whether original proceedings or appeals from district or municipal courts increased from 13,004 last year to 13,718 this year. Dispositions also increased but at the end of the year there were pending 3,885 as against 3,578 at the beginning.

COUNTIES	Law Cases Start of Year		No. Cases Entered During Year Removals from District Court						Trials by Superior Court Justices		No. Jury Verdicts (Ordered—Not Ordered)				No. Findings (Law)		Non-triable Docket Transferred to		Remaining on		Remaining Active— Law Docket End of Year		Disposed of				Triable at Issue Awaiting Trial		Enjoined	Remaining Undisposed of		Cases Marked Inactive		Inactive Dismissed		Motor Torts by Dist. Court Justices	Days Superior Ct. Judges Sat	Days District Court Just. Sat on M.V.T.	Equity				
																							J.		N.J.														Cases on Hand	Entered	Disposed of	Remaining	Trials by Sup'r Ct. Justices
	J.	N.J.	Orig. Writs	Ptff.	Dft.	By Both	By Court	J.	N.J.	O. Ptff.	N.O.	O. Dft.	N.O.	Ptff.	Dft.	J.	N.J.	J.	N.J.	J.	N.J.	Aud.	Other	Aud.	Other	J.	N.J.	J.		N.J.	J.	N.J.	Cases on Hand	Entered	Disposed of								
BARNSTABLE	Contracts	109	89	87	0	27	0	2	1	4	0	1	0	0	3	1	5	12	12	19	69	35	0	80	0	82	50	21	0	86	66	8	5	16	18								
	Motor Torts	101	3	50	11	43	0	1	1	1	0	0	0	1	1	0	6	0	17	1	121	6	0	58	0	0	114	5	0	144	7	7	0	4	0								
	Other Torts	53	3	34	0	5	0	2	4	0	3	1	0	0	0	0	2	1	8	0	41	4	0	38	0	3	38	3	0	51	5	6	0	4	0								
	Land Takings	100	0	31	0	0	0	0	4	1	0	4	0	0	1	0	12	0	10	0	71	1	0	36	1	0	72	0	0	93	1	3	0	5	0								
	All Others	1	1	10	0	2	0	0	0	2	0	0	0	0	1	1	0	0	0	2	4	0	1	0	6	4	1	0	2	5	0	1	0	0									
	TOTALS	364	96	212	11	77	0	5	10	8	3	6	0	1	6	2	25	13	47	21	304	50	0	213	1	91	278	30	0	376	84	24	6	29	18	0	41	0	82	153	88	147	15
BERKSHIRE	Contracts	122	62	63	0	28	0	0	2	6	2	2	0	0	6	0	9	9	30	31	72	34	2	74	0	32	66	23	0	102	65	9	8	11	3								
	Motor Torts	239	6	169	44	31	0	4	2	0	0	2	0	1	0	0	9	0	16	2	256	16	2	193	0	8	248	16	0	272	18	3	1	12	4								
	Other Torts	95	12	78	0	4	0	0	0	1	2	0	0	0	1	0	1	1	4	104	15	0	48	0	7	101	13	0	115	19	2	1	8	2									
	Land Takings	108	0	70	0	0	0	0	4	0	0	3	2	0	0	0	4	0	11	0	128	0	0	39	0	0	120	0	0	139	0	1	0	0	0								
	All Others	7	5	3	0	0	0	0	0	4	0	0	0	0	1	3	0	1	4	0	0	0	4	0	6	0	0	4	1	3	0	2	1										
	TOTALS	571	85	383	44	63	0	4	8	11	4	7	2	1	8	3	23	11	72	38	560	65	4	358	0	53	535	52	0	632	103	18	10	33	10	0	56	0	200	160	128	232	6
BRISTOL	Contracts	228	190	138	0	35	0	2	16	5	0	10	2	4	3	2	31	42	50	71	118	55	1	161	1	118	103	42	3	168	126	6	11	5	22								
	Motor Torts	1,029	44	417	75	380	0	40	109	2	0	71	11	45	2	0	75	7	132	11	736	23	1	995	0	52	661	20	0	868	34	6	2	26	2								
	Other Torts	218	36	165	0	35	0	3	20	5	0	7	7	6	3	2	18	9	48	8	185	12	0	205	0	37	158	10	1	233	20	2	1	6	3								
	Land Takings	41	7	83	0	0	0	0	3	2	0	3	0	0	2	0	8	0	2	0	91	4	0	38	0	8	61	3	0	89	4	0	0	2	3								
	All Others	4	27	26	1	0	0	0	0	0	0	0	0	0	0	0	0	9	0	8	0	12	0	4	0	25	1	3	5	20	0	0	0	4									
	TOTALS	1,520	304	829	76	450	0	45	148	14	0	91	20	55	10	4	132	67	232	98	1,130	106	2	1,403	1	240	984	78	4	1,363	204	14	14	39	34	18	202	45	522	279	258	543	10
DUKES	Contracts	25	0	4	0	2	0	0	3	0	1	0	2	0	0	0	0	0	0	3	15	0	11	0	2	3	15	0	3	15	0	8	0	1									
	Motor Torts	5	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	5	0	0	0	0	0	5	0	0	5	0	0	1	0	0									
	Other Torts	4	0	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	2	0	0	2	0	0	0	0	0									
	Land Takings	4	0	0	0	0	0	0	0	2	0	0	1	1	0	0	0	0	0	3	0	0	0	0	3	3	0	0	3	0	0	3	0	0									
	All Others	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0									
	TOTALS	38	0	5	0	4	0	0	3	2	1	0	3	1	0	0	0	0	0	13	15	0	14	0	5	13	15	0	13	15	0	12	0	1	0	0	2	0	6	3	2	7	0
ESSEX	Contracts	667	279	376	0	99	0	2	11	9	0	3	2	7	5	4	53	67	196	139	346	97	32	423	3	171	323	70	0	542	236	58	28	41	32								
	Motor Torts	2,389	24	698	138	713	0	71	65	6	0	21	9	28	3	3	157	3	319	18	1,595	8	287	1,665	2	51	1,528	7	0	1,914	26	59	4	58	5								
	Other Torts	734	69	383	0	74	0	2	32	16	0	10	11	13	10	6	46	21	110	37	538	20	18	538	0	46	522	9	0	648	57	19	9	24	5								
	Land Takings	124	2	101	0	0	0	0	6	9	0	7	0	0	9	0	12	3	20	3	116	1	1	62	0	9	99	0	0	136	4	0	0	0	0								
	All Others	1	29	12	5	0	0	0	0	4	0	0	0	0	2	2	2	6	17	24	5	22	0	10	0	23	4	10	0	22	66	7	7	6	4								
	TOTALS	3,915	403	1,570	143	886	0	75	114	44	0	41	22	48	29	15	270	100	662	221	2,600	148	338	2,698	5	300	2,476	96	0	3,262	389	143	48	129	46	0	346	0	647	450	484	613	44
FRANKLIN	Contracts	23	17	7	0	3	0	0	0	0	0	0	0	0	0	0	8	0	16	0	12	1	2	15	0	4	8	1	0	16	13	2	4	3	3								
	Motor Torts	158	0	117	14	8	2	1	7	0	0	9	0	15	0	0	7	0	29	0	151	0	0	114	0	0	142	0	0	184	1	2	0	8	0								
	Other Torts	40	2	11	0	0	0	0	0	0	0	0	0	0	0	0	5	0	20	0	25	0	0	13	0	1	20	0	0	40	0	3	1	1	0								
	Land Takings	29	0	23	0	0	0	0	0	0	0	0	0	0	0	0	0	0	15	0	30	0	0	7	0	0	15	0	0	45	0	6	0	3	0								
	All Others	0	8	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	8	0	0	0	1	0	0	0	8	0	0	0	0	0								
	TOTALS	250	27	159	14	11	2	1	7	0	0	9	0	15	0	0	20	0	80	0	218	9	2	149	0	6	185	1	0	285	22	13	5	15	3	0	33	0	56	21	31	45	0
HAMPDEN	Contracts	396	194	223	0	46	0	4	66	9	0	4	3	1	10	1	29	40	36	40	386	221	0	195	3	101	338	153	0	424	245	14	12	28	13								
	Motor Torts	2,621	54	952	234	563	0	25	139	3	0	170	6	150	1	3	115	0	133	0	2,411	42	0	2,059	1	29	2,183	45	0	2,585	48	38	3	16	2								
	Other Torts	516	37	235	0	44	0	0	25	5	0	7	8	15	2	5	29	6	41	6	537	40	0	280	0	15	461	25	0	549	42	6	1	21	4								
	Land Takings	69	5	115	0	0	0	0	3	0	0	1	1	0	0	0	3	0	3	0	108	4	0	72	0	4	106	2	0	116	4	4	0	2	1								
	All Others	11	52	22	0	0	0	0	0	0	0	0	0	0	0	0	13	0	11	7	73	0	5	0	20	7	32	0	7	79	0	3	0	3									
	TOTALS	3,613	342	1,547	234	653	0	29	233	17	0	182	18	166	13	9	176	59	213	57	3,449	380	0	2,611	4	169	3,095	257	0	3,681	418	62	19	67	23	72	410	142	547	377	282	643	26
HAMPSHIRE	Contracts	44	17	21	0	4	0	0	1	0	0	1	0	0	0	0	11	2	18	6	17	6	2	23	0	14	11	4	0	35	12	3	2	3	5								
	Motor Torts	178	1	100	9	55	4	4	25	0	0	27	1	11	0	0	48	0	62	0	163	1	0	124	0	2	139	1	0														

NOTE: Divorce and Nullity cases in Superior Court totaled 101. Ten of the fourteen counties had none. Hampshire County handled 92 and disposed of 32. The nine remaining cases were docketed in Middlesex, Norfolk and Suffolk counties.

The appellate division for the review of sentences under General Laws, chapter 278, section 28A, sat 11 days during the year. It has kept current with the applications for revision. The tabulation of the cases is as follows:

Appeals Pending June 30, 1958	37	
Appeals Filed	165	
	<hr/>	
Total		202
Sentences Modified	15	
Sentences Increased	0	
Appeals Dismissed	80	
Appeals Withdrawn	69	
Pending, June 30, 1959	38	
	<hr/>	
Total		202

CRIMINAL BUSINESS STATISTICS OF THE SUPERIOR COURT FOR THE

	Barnstable	Berkshire	Bristol	Dukes
Number remaining at first of the year.....	60	188	266	4
Number of indictments returned.....	140	71	572	41
Number of appeal cases entered.....	98	114	646	19
Appeals withdrawn before sitting following entry.....	13	18	33	10
Appeals withdrawn after next sitting under G.L. Chap. 278, sec. 25.....	2	7	34	0
Appeals withdrawn during sitting*.....	5	4	103	0
Number of actions on bail bonds for recognizances entered.....	0	0	0	0
Number disposed of in previous years brought forward for redispotion.....	0	0	2	0
Indictments waived.....	30	36	167	0
Number of complaints filed after waiver of indictment.....	0	0	0	0
Number disposed of during year.....	254	224	1,142	50
Number remaining at end of the year.....	54	156	321	4
Number of trials during year by superior court justices.....	13	2	66	24
Number of trials during year by district court judges.....	50	13	205	0
Number awaiting trial at end of the year.....	32	100	131	4
Number of days during which a superior court justice sat for trials, dispositions or redispotions.....	18½	11	46	7
Days district court judges sat in superior court.....	15	10	58	0

*In Suffolk County, appeals in this category are included in the preceding classification.

YEAR ENDING JUNE 30, 1959, AS REPORTED BY CLERKS OF SAID COURT

Essex	Franklin	Hampden	Hampshire	Middlesex	Nantucket	Norfolk	Plymouth	Suffolk	Worcester	Totals
57	21	224	107	492	0	415	87	1,413	244	3,578
417	48	230	61	1,392	7	820	423	2,978	804	8,004
519	24	183	51	1,063	1	429	393	1,853	217	5,610
43	13	17	5	0	0	35	32	98	29	346
21	0	15	8	173	0	29	9	96	29	423
64	4	11	8	50	0	87	43	0	34	413
0	0	0	0	9	0	1	0	28	0	38
36	2	0	0	83	1	21	121	569	35	870
138	4	50	8	47	7	51	67	54	252	911
0	0	8	0	38	0	0	0	0	20	66
917	68	311	120	2,341	9	1,284	878	5,312	1,075	13,985
122	14	341	86	561	0	302	129	1,389	406	3,885
116	9	28	7	149	9	104	93	558	859	2,037
28	3	12	8	226	0	160	95	295	216	1,311
117	14	312	45	322	0	297	10	1,344	403	3,131
76	11	41	8	232	1	68	66	550	86	1,221½
15	4	10	8	160	0	76	44	137	66	603

PROBATE COURTS

I have commented on the probate court statistics already in this report. The following two pages show them in detail.

I make a few additional comments. Partition is steadily disappearing. The use of the petition for a decree of desertion and living apart is resorted to less and less.

The gradual shift in emphasis toward the domestic trouble litigation continued at a somewhat increased rate this past year. It is interesting to note that in 1937 the statistics show 1,054 separate support and 6,410 divorce entries, a total of 7,464; in 1958 these figures were 2,135 and 8,524, respectively, a total of 10,659, a bit over 42% increase. While in 1937 these two types of domestic cases accounted for about 21% of all entries, this last year they represented over 25%.

EXTRACTS FROM THE REPORTS OF THE REGISTERS

	Barnstable	Berkshire	Bristol	Dukes	Essex
Original entries.....	600	913	2,120	83	3,568
Administrations allowed.....	145	399	611	18	1,423
Wills allowed.....	256	316	628	47	983
Guardians appointed.....	28	88	126	1	265
Conservators appointed.....	25	36	71	4	145
Trustees appointed.....	28	23	61	7	120
Partitions	11	2	10	4	7
Separate support.....	7	18	71	1	43
Desertion and living apart.....	2	5	7	0	8
Custody	0	6	7	0	15
Divorce:					
Original entries	163	232	677	36	823
Decrees nisi.....	87	160	474	21	507
Other decrees and orders.....	13	64	427	27	337
Commitments of mentally ill and feeble minded	0	0	12	0	8
Adoptions	44	74	118	0	234

*In counties outside Suffolk commitments are generally handled by the district courts.

OF PROBATE FOR YEAR ENDING DECEMBER 31, 1958

Franklin	Hampden	Hampshire	Middlesex	Nantucket	Norfolk	Plymouth	Suffolk	Worcester	Totals
479	2,151	605	7,117	42	3,079	1,671	5,454	3,690	31,572
135	664	212	2,226	18	965	628	1,931	1,233	10,608
132	576	192	2,054	21	1,063	493	1,176	1,016	8,953
22	138	30	468	3	220	101	314	274	2,078
25	94	12	283	0	134	66	246	193	1,334
12	87	17	334	1	194	38	176	109	1,207
0	8	2	20	0	11	16	17	14	122
1	45	11	195	0	143	71	1,345	184	2,135
2	4	3	4	0	1	6	6	5	53
1	2	1	33	0	17	6	78	4	170
109	900	71	1,705	8	570	508	1,637	1,085	8,524
69	603	50	1,151	4	370	317	1,098	1,082	5,993
28	777	75	1,339	4	814	683	2,388	175	7,151
3	18	4	15	0	8	7	1,621*	11	1,707
48	254	34	566	0	267	109	257	220	2,225

LAND COURT

Original entries in the land court continue to increase. They reached 4,951 this year. There was a slight decrease in the number of dispositions—4,959 this year. The sharpest increase in entries was in the category of proceedings after registration, a reflection of continued activity in the real estate market. This may not continue at the present rate because of economic tendencies during the past months, resulting in gradually increasing interest rates and a reduction in available mortgage money. Original registration petitions have again dropped off. As is well known, in most cases the purpose of filing such a petition is to set at rest doubts about a title good in fact but defective or doubtful of record. It may well be that by now most titles requiring such attention have been registered and that this class of jurisdiction will continue to decline. But even if they should end completely the court will continue to be kept busy with various proceedings subsequent to registration and with its other types of jurisdiction.

The assurance fund has now gone over \$400,000. No payments were made from it this year.

Following are the figures for the twelve months ending June 30, 1959:

CASES ENTERED

Land registration	729	
Land confirmation	12	
Land registration, subsequent.....	1,082	
Tax Lien.....	736	
Miscellaneous	303	
Equity	2,089	
		<hr/>
Total cases entered		4,951
Decree plans made.....	687	
Subdivision plans made.....	947	
		<hr/>
Total plans made.....		1,634
Assurance Fund, June 30, 1959.....		\$ 403,250.47
Assessed value of land on petitions in registration and confirmation cases entered.....		10,348,795.91

CASES DISPOSED OF BY FINAL ORDER,
DECREE OR JUDGMENT

Land registration	764	
Land confirmation	16	
Land registration, subsequent.....	1,082	
Tax Lien.....	575	
Equity and miscellaneous.....	2,522	
		<hr/>
Total cases disposed of.....		4,959

MUNICIPAL COURT OF THE CITY OF BOSTON

Given below are the statistics of the work of the municipal court of the city of Boston for the twelve months ending June 30, 1959, as reported by the clerks. I have retained the same form of statistics which has been in use for many years in reporting the work of this court, but have added a line for convenience of the reader, showing the net civil entries after removals to the superior court. The volume of business in the court is slightly off on both the criminal and civil sides from last year.

CRIMINAL BUSINESS

Automobile violations.....	2,394
Parking violations.....	27,214
Domestic relations.....	269
Drunkenness in court.....	6,198
Drunkenness released by probation officer.....	5,868
Other criminal cases.....	4,124
Inquests entered.....	1
Search warrants issued.....	141
Total criminal business.....	46,209

DISPOSITIONS:

Pleas of guilty.....	23,606
Pleas of not guilty.....	2,391
Placed on file, dismissed, etc.....	14,173
Not arrested, pending for trial or sentence.....	5,391
Defendants acquitted.....	653
Bound over to grand jury.....	906
Defendants placed on probation (does not include surrenders).....	3,538
Defendants fined.....	18,914
Imprisonments.....	2,006
Fines appealed.....	128
Imprisonments appealed.....	358

NON-CRIMINAL PARKING LAW:

Parking tags turned in by violators.....	297,432
--	---------

FINANCES:

Received from parking tag office.....	\$276,918.55
Received from court fines, fees, forfeitures, etc.....	74,182.75
Total, received and turned over to Commonwealth and City of Boston.....	\$351,101.30
Money received as bail by the court.....	74,553.00
Total money handled by the court.....	\$425,654.30

While these financial figures are not directly applicable to the volume of business, I continue to report them, particularly as they indicate what a large proportion of receipts is made up of non-criminal parking ticket payments. It is off from last year by a large amount, some \$58,000. Perhaps the law of diminishing returns has set in on it.

CIVIL BUSINESS

	<i>Contract</i>	<i>Tort</i>	<i>Contract or Tort</i>	<i>All Others</i>	<i>Total</i>
Actions entered	12,842	7,950	324	707	21,823
Actions removed to superior court	203	1,947	36	0	2,186
Net entries after removals	12,639	6,003	288	707	19,637
Actions defaulted	7,466	819	44	296	8,625
Trials*	865	1,567	28	182	2,642
Plaintiff's findings**	641	958	0	130	1,729
Defendant's findings**	111	431	7	61	610
<i>Appellate Division</i>					
Reports allowed	8	6	0	0	14
Reports disallowed	4	2	0	0	6
Cases heard	16	4	0	2	22
Cases affirmed**	13	3	1	0	17
Cases reversed**	3	0	0	0	3
Cases consolidated under General Laws, chapter 223, section 2	11	89	2	0	102
Appeals to the su- preme judicial court perfected	5	0	0	0	5
Appeals to supreme judicial court affirmed	1	0	0	0	1
Appeals to supreme judicial court reversed	1	0	0	0	1
Plaintiff's judgments total, viz.:					14,501
By default	8,058	310	0	234	(8,602)
After trial	641	958	0	130	(1,729)
By agreement	851	3,310	0	9	(4,170)
Defendant's judg- ments total, viz.:					819
By non-suit	10	160	4	1	(175)
After trial	111	431	7	61	(610)
By agreement	13	21	0	0	(34)
Neither party agree- ment	231	210	25	2	468
Amount of plaintiffs' judgments	\$2,918,047.25	\$1,246,389.20	0	\$3.00	\$4,164,439.45
Average of plaintiffs' judgments	\$305.55	\$272.26	0	\$0.01	\$287.18

TRANSFER OF ACTIONS:

During the reporting year 417 cases were transferred under the provisions of General Laws, chapter 223, sections 2A and 2B; 15 actions were removed to the United States district court.

*This includes 365 remanded cases tried, other than assessment of damages on defaults.

**There is always some overlapping of cases heard before the reporting period and decided during it, and cases heard during this period and decided later. These findings do not include any remanded cases.

Actions transferred from the superior court for trial under Acts of 1958, chapter 369 ("remanding" statute).

Cases transferred			1,342
Cases tried			365
Plaintiff's findings:			
Contract	84		
Tort	125	209	
Defendant's findings:			
Contract	26		
Tort	122		
Contract or tort	8	156	
Damages assessed after defaults			38
Non-suits			44
Neither party			236
Other agreements for judgment filed			4
Suspended for various reasons			169
Continued to specified date for trial by the court			486
Total			1,342

SUMMARY PROCESS:

There were 436 of these cases entered, as against 528 the previous year.

SUPPLEMENTARY PROCESS:

This year there were 1,282 of these cases; the prior year there were 1,305 of them.

SMALL CLAIMS CASES

	<i>Contract</i>	<i>Tort</i>	<i>Total</i>
Actions entered	1,132	81	1,213
Actions settled	294	18	312
Counter-claims or set-offs	0	0	0
Trials	146	44	190
Findings for plaintiff	99	32	131
Findings for defendant	47	12	59
Judgments by default	519	4	523
Judgments by non-suit	5	6	11
Amount of plaintiffs' judgments	\$24,863.98	\$1,994.73	\$26,858.71
Transferred to regular civil docket	5	1	6
Removed to superior court	6	0	6
Executions issued	344	8	352
Notices returned unclaimed	330	2	332

UNIFORM RECIPROCAL SUPPORT CASES:

In this last reporting period 96 new cases were brought in the court; in 47 cases the petitioner resided in Boston, in 49 the respondent lived here. This was an increase of 12 cases over the previous year. Collections for support through the court amounted

to \$53,340.62, an increase of over \$13,000 as compared with last year. There is now an active load of 311 cases pending under the uniform act; of these the petitioner is a Boston resident in 185 and the respondent in 126. The cases come from or have been sent to 33 different states, as well as Washington, D. C. and Puerto Rico; in all 35 different jurisdictions are represented.

This year I omit the comparison of removals to the superior court with the last year's figures. Such a calculation no longer has the same interest it had before the repeal of the Fielding act. The figures next year will have more significance as indicating the trend of thinking of defendants, who alone can now remove cases, on the subject of removing cases from this court.

DISTRICT COURTS

The following insert will show the work of these courts, covering the twelve months ending June 30, 1959. The printed tabulation this year drops certain categories which have heretofore been reported. These are smaller matters and the information on them is available from the administrative committee. The report this year includes the handling of cases transferred for trial from the superior court.

The net civil entries after removals increased from 63,717 to 66,968. There can be no doubt that this increase is related to the drop in the superior court entries, already mentioned and commented upon. The number of trials exclusive of the remanded cases also showed an increase, from 7,701 to 8,467. With 816 trials of remanded cases the total number thus increased substantially.

On the cases transferred from the superior court, the statistics show a successful operation. Of 3,788 cases received, including those sent down near the end of the reporting period, 2,478 have already been disposed of in the district courts. 816 cases were tried and there were 266 claims by losers for retransfer, or 32.6% of those tried to a decision. If we deduct these from the 2,478 disposed of as far as the district courts are concerned, we have 2,212 already finally disposed of by trial or settlement out of the 3,788 sent to the lower courts for trial, or 58.4% of them. It will be of interest to see how many of the 266 claims for retransfer are ever followed by actual trial.

While total criminal cases were up slightly there was a welcome and substantial drop in one class, the juvenile cases. These numbered 9,135 as against 10,235 last year—over 10% off. It is to be noted that there was also a decrease in the number of cases in the Boston juvenile court.

There is a phenomenon in the district court statistics, as well as in those of the Boston municipal court, which is somewhat puzzling. This is the continued decline in the number of cases taken to the appellate divisions. The number of such appeals is insignificant in relation to the number of entries or, for that matter, the number of trials. I can give no ready explanation for this as the report to the appellate division is an inexpensive procedure. Also, the practice while technical is not particularly difficult if required deadlines are kept in mind. Appeals to the supreme judicial court also continue to be very rare.

(The following corrections were received from the District Court of Central Middlesex after the printed inserts were completed:

1. Under column 2 entitled "Trials less Summary Process," the figure should be 61 instead of 17.
2. Under column 4 entitled "Summary Process Tried" the figure should be 11 instead of 8.)

STATISTICS OF THE DISTRICT COURTS OF MASSACHUSETTS FOR THE YEAR ENDING JUNE 30, 1959 AS REPORTED BY THE CLERKS OF SAID COURTS

Compiled by the Administrative Committee of District Courts

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	
DISTRICT COURTS arranged in accordance with 1955 CENSUS	Total Civil Writs Entered	Trials less Summary Process (Ejectments)	Summary Process Entered (Included in column 1)	Summary Process Tried	All Removals	Reported to Appellate Division	Appealed to Supreme Judicial Court	Supplementary Process	Small Claims	Criminal Cases Begun	Criminal Appeals	Drunkenness	Automobile Cases	Operating Under Influence of Intoxicating Liquor	Juvenile Cases	Neglected Children	Parking Tickets Returned	Insane Commitments	Uniform Reciprocal Enforcement of Support Act G.L., Chap. 273A.			Remand or Transfer Cases Acts 1958, Chapter 369					
																			No Cases Initiated	No Cases Received from Other States	Amount of Money Collected	No. Cases Received	Tried	Retransferred to Superior Court after Trial	Disposed of by Non-Suit, Default, Settled, etc.	Pending	
*1. Central Worcester.....	4,873	363	319	62	533	5	0	1,952	4,254	17,679	315	3,122	9,554	194	616	50	37,322	983	58	29	56,810.51	401	43	24	235	166	*†1.
2. Springfield.....	4,511	391	296	46	672	6	0	1,679	4,615	19,393	63	3,772	12,627	155	354	48	46,093	230	39	43	70,262.46	80	8	8	54	26	†2.
3. 1st East. Middlesex, Malden....	4,534	274	276	220	458	5	1	1,179	2,466	7,486	120	1,088	5,462	127	306	2	38,970	51	23	10	58,153.40	245	37	8	138	107	†3.
4. East Norfolk, Quincy.....	3,779	383	176	60	316	3	0	966	2,394	5,535	98	1,638	2,389	251	379	11	993	22	31	9	41,167.80	217	51	27	175	42	†4.
5. 3rd. East. Middlesex, Cambridge	4,087	348	366	122	414	2	1	986	1,782	18,700	188	2,337	14,856	195	308	41	133,036	88	27	13	32,349.30	172	32	20	130	42	†5.
6. Dorchester.....	1,705	175	717	239	191	0	0	1,472	1,965	6,230	131	1,691	2,899	91	439	16	31,204	0	55	21	36,410.60	162	18	3	75	87	†6.
7. Southern Essex, Lynn.....	2,822	169	396	68	321	1	0	1,160	2,442	5,498	74	2,052	2,105	164	244	8	20,624	17	44	13	39,775.66	147	20	6	75	72	†7.
8. Lowell.....	2,676	238	249	46	211	0	0	581	2,692	4,895	27	1,480	2,604	153	211	24	16,800	113	60	15	50,808.02	79	24	4	74	5	†8.
9. 3rd Bristol, New Bedford.....	2,297	296	196	32	287	5	1	368	3,303	4,943	119	1,671	1,229	299	226	0	2,029	124	24	12	23,109.64	87	38	15	76	11	†9.
10. Roxbury.....	2,392	60	1,825	343	71	1	1	1,617	1,966	23,162	325	5,572	11,832	148	654	89	104,360	6	167	53	99,166.17	92	18	7	62	30	†10.
11. West Roxbury.....	604	59	317	89	35	1	0	739	980	4,480	161	764	2,275	73	399	1	10,753	2	25	10	21,523.69	63	10	3	36	27	†11.
12. 2nd Bristol, Fall River.....	1,183	119	101	30	146	2	1	184	1,265	4,996	256	1,916	1,750	201	195	0	15,221	80	26	8	14,012.00	50	9	0	28	22	†12.
13. Lawrence.....	1,439	126	121	40	201	0	1	148	1,330	3,072	18	1,232	1,285	97	160	13	17,023	4	14	3	14,988.50	70	17	3	65	5	†13.
14. First Essex, Salem.....	1,923	108	89	30	161	0	0	360	1,147	2,595	44	945	903	98	119	13	12,841	314	24	5	19,955.10	66	8	4	36	30	†14.
15. Northern Norfolk, Dedham....	1,436	145	39	14	113	0	0	604	960	1,848	37	414	1,033	95	116	17	2,599	295	14	5	7,631.00	75	24	9	58	17	†15.
16. Somerville.....	2,325	170	246	67	98	3	2	753	1,114	3,645	94	1,189	1,961	76	111	3	23,150	15	13	7	11,668.91	141	26	13	76	65	†16.
17. 4th East. Middlesex, Woburn....	1,732	121	54	39	166	3	0	717	1,043	1,602	59	607	653	105	127	1	1,029	22	7	10	12,367.46	84	17	8	21	63	†17.
18. 2nd East. Middlesex, Waltham..	1,839	118	105	36	157	2	0	491	1,260	7,505	109	987	4,653	157	206	4	41,067	542	11	8	16,227.00	42	8	3	30	12	†18.
19. Newton.....	1,616	159	57	16	189	0	0	432	1,199	4,951	78	528	3,816	65	107	0	22,154	20	8	2	17,212.65	117	19	8	80	37	†19.
20. Brockton.....	1,556	97	121	17	151	5	0	413	1,051	3,418	91	1,006	1,489	129	148	14	10,865	54	16	5	27,439.10	74	14	11	60	14	†20.
21. Hampshire, Northampton.....	654	48	32	8	79	0	0	24	667	2,737	48	664	1,400	116	137	3	649	276	6	8	6,203.00	26	4	0	14	12	†21.
22. Chelsea.....	1,208	212	199	62	215	0	0	701	1,087	4,879	90	1,742	1,582	126	198	29	3,462	41	11	1	18,693.00	144	10	3	43	101	†22.
23. Central Berkshire, Pittsfield....	758	58	58	9	61	1	1	216	1,426	4,497	21	537	3,288	64	44	2	20,128	0	7	14	9,749.81	36	27	3	34	2	†23.
24. 2nd Plymouth, Hingham.....	1,358	95	56	8	75	2	0	487	1,046	1,685	114	511	450	144	135	4	149	32	20	4	16,508.94	45	8	5	33	12	†24.
25. 1st Bristol, Taunton.....	786	53	55	10	77	1	0	145	755	2,466	69	231	1,089	92	80	0	447	175	12	13	11,206.00	28	5	3	21	7	†25.
26. East Boston.....	797	51	384	153	85	1	0	522	828	3,764	84	639	2,314	39	140	9	15,807	9	21	2	12,250.00	56	8	5	34	22	†26.
27. Brighton.....	617	57	357	31	49	0	0	531	733	4,937	72	649	3,608	37	42	0	24,969	0	21	6	13,138.48	51	41	3	47	4	†27.
28. Central Middlesex, Concord.....	602	17	37	8	49	0	0	168	459	2,615	64	265	2,000	93	124	1	3,556	90	3	3	4,022.00	33	11	3	30	3	†28.
29. 1st So. Middlesex, Framingham	1,296	188	75	14	131	0	0	337	1,053	2,460	43	451	1,354	89	213	6	182	45	20	6	15,587.55	70	38	2	63	7	†29.
30. Brookline.....	1,391	92	83	26	104	2	1	296	536	3,192	22	234	1,454	19	74	5	48,732	3	11	3	12,550.89	123	22	9	93	30	†30.
31. No. Central Essex, Haverhill....	870	129	50	10	107	0	0	335	688	2,138	45	669	1,077	65	58	10	1,348	19	43	5	19,655.59	46	12	2	41	5	†31.
32. Holyoke.....	572	40	59	10	90	0	0	147	612	2,134	23	615	651	106	105	7	7,700	0	4	4	10,3						

BOSTON JUVENILE COURT

The table reported herewith shows the activity of this court. The number of complaints decreased from 1,054 to 862. It is to be noted also that the number of juvenile cases declined in the district courts. These decreases warrant some degree of optimism as an indication that perceptible progress is being made in the reduction of juvenile delinquency and crimes against children.

BOSTON JUVENILE COURT STATISTICS

July 1, 1958 — June 30, 1959

COMPLAINTS:

	<i>Boys</i>	<i>Girls</i>	<i>Totals</i>
Juvenile Criminal	0	1	1
Delinquent	584	235	819
Wayward	0	1	1
Totals	584	237	821
	<i>Men</i>	<i>Women</i>	<i>Totals</i>
Adults	14	16	30
	<i>No. of</i>	<i>No. of Children</i>	
	<i>Complaints</i>	<i>Represented</i>	
Children in Need of Care and Protection	11	26	
TOTAL NUMBER OF ALL COMPLAINTS:			
Juvenile		821	
Adult		30	
Children in Need of Care and Protection		11	
		862	

Active as of June 30, 1959:

JUVENILES:

	<i>Individuals</i>	<i>Complaints</i>
Boys	202	222
Girls	98	102
Totals	300	324
ADULTS:		
Men	24	25
Women	31	31
	55	56
CHILDREN IN NEED OF CARE AND PROTECTION	71	25
TOTALS	426	405

NUMBER OF CASES:

Juveniles	324
Adults	56
Complaints of Children in Need of Care and Protection	25
	405

